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IN THE  
Supreme Court of the United States

OCTOBER TERM, 1990

ROBERT C. RUFO,  
SHERIFF OF SUFFOLK COUNTY, ET AL.,  
PETITIONERS,

v.

INMATES OF THE SUFFOLK COUNTY JAIL, ET AL.,  
RESPONDENTS.

THOMAS C. RAPONE,  
COMMISSIONER OF CORRECTION,  
PETITIONER,

v.

INMATES OF THE SUFFOLK COUNTY JAIL, ET AL.,  
RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIRST CIRCUIT

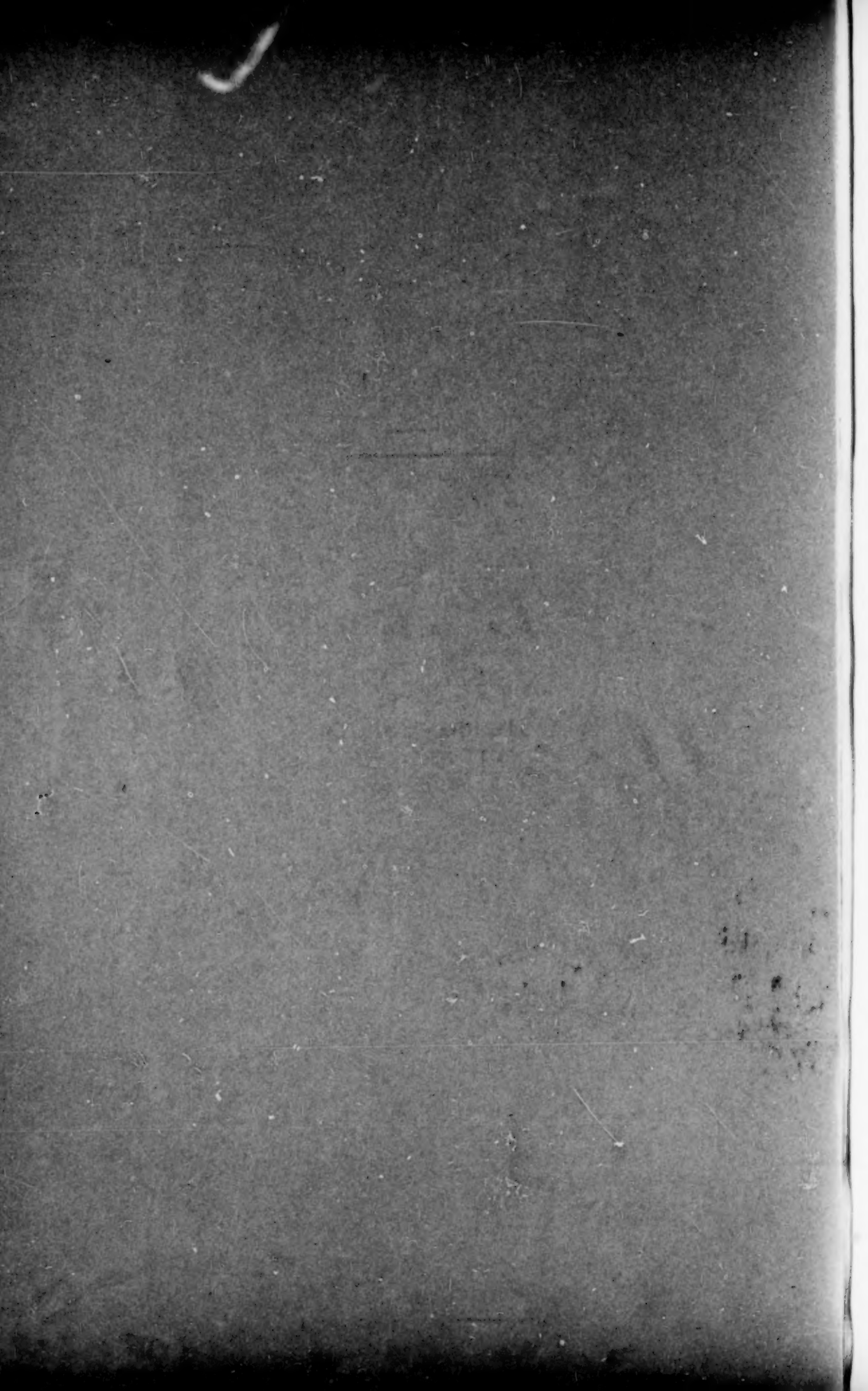
JOINT APPENDIX

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First Circuit dated  
September 20, 1990.....1a

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First Circuit dated  
September 20, 1990.....3a

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Memorandum and Order of the  
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April 9, 1990.....5a

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## RELEVANT DOCKET ENTRIES

*Inmates of the Suffolk County Jail*  
*v. Thomas Eisenstat, et al.,*  
No. 71-162-G/K  
United States District Court,  
District of Massachusetts

DATE	PROCEEDINGS
1971	
Jan 21	Complaint
" 22	Summons Issued
" 22	Answer of Thomas S. Eisenstat Filed
Feb 18	Answer of Commissioner of Correction Filed
" 19	Application To Determine Class Action and To Direct Notice To Class
1972	
Jun 2	Partial Final Judgment Entered
Jul 7	Direction of Entry of Final Partial Judgment Entered

**1973**

Jun 20	Opinion and Order Entered
Nov 12	Memorandum and Supplemental Order Regarding the Transfer of Women Inmates Entered
" 16	Memorandum and Further Order Entered Regarding the Transfer of Women Inmates

**1975**

Mar 5	Order As to Bail Appeal Project Entered
Oct 20	Memorandum and Order Modifying the Decree dated June 20, 1973, Entered

**1979**

May 7	Consent Decree Approved
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**1984**

Oct            [State Court Action Filed By  
                 Attorney General against the  
                 Sheriff.]

                 [Action Filed by the Sheriff  
                 against the Mayor and the City  
                 Council of Boston to  
                 appropriate funds to build a  
                 new jail.]

**1985**

Jan 9           [Motion of Sheriff To Increase  
                 Staff of Bail Appeal Project in  
                 State Case]

Apr 11           Order to Modify Consent Decree  
  "   22           Order to Modify Consent Decree  
                 and Order of 4/11/85

Dec 16           [Order No. 16 Entered in the  
                 State Case creating the  
                 "Charles Street Jail Judge"]

**1986**

Feb 24 [Order of State Court for Jail  
to be Built at Nashua Street  
and Completed by March 1990]

**1989**

Feb 23 [Order No. 39 entered in State  
Case Amending Previous Order  
No. 16]

Jul 17 Motion to Modify the Consent  
Decree to Allow Double Bunking  
filed by the Sheriff  
" 25 Plaintiff's Opposition to  
Motion of the Sheriff of  
Suffolk County for Modification  
of Consent Decree Filed

**1990**

Apr 9 Motion of the Sheriff of  
Suffolk County for Modification  
of Consent Decree Denied  
" 30 Notice of Appeal Filed by the  
Sheriff and Certification of  
Ordering of Transcript

*Inmates of the Suffolk County Jail*  
*v. Dennis J. Kearney, et al.*  
NO. 90-1440  
United States Court of Appeals  
for the First Circuit

<u>DATE</u>	<u>PROCEEDINGS</u>
1990	
Apr 30	Notice of Appeal docketed
Sep 20	Judgment Affirmed

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C.A. NO. 71-162-G

INMATES OF THE SUFFOLK COUNTY  
JAIL, ET AL.,  
Plaintiffs,

v.

THOMAS S. EISENSTADT, ET AL.,  
Defendants.

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MEMORANDUM AND FURTHER ORDER

November 16, 1973

GARRITY, J. A hearing in the above-designated case was held yesterday partly for the purpose of inquiring as to things done and contemplated by the defendants to implement the court's supplemental order dated November 12 that no women be kept at Charles Street Jail after November 26, 1973. The parties have not formulated a plan or agreement which would carry out the court's order and therefore it becomes necessary for the

court to enter this further, more specific order.

There are now 20 women inmates at Charles Street, of whom 4 have been convicted and 16 are detainees awaiting trial. One of the detainees is a federal prisoner. The only party, and indeed the only person in the Commonwealth, in a position to arrange for the confinement of these women inmates on November 26 at a facility other than Charles Street is the defendant Commissioner of Correction Hall, and he and his staff will be ordered to do so. The logical place to which these 20 women should be transferred is the Massachusetts Correctional Institution at Framingham, which is approximately 23 miles from Boston and where there are 24 beds currently available. The court is keenly

aware of the opinion of the Commissioner and the Superintendent at MCI Framingham, as explained in Mr. Bell's memorandum dated October 26, 1973 to Assistant Attorney General O'Malley filed herein on October 30, that keeping any women at Framingham other than those sentenced to confinement of three months or more will seriously disrupt important rehabilitative programs currently in operation at Framingham and will create security and other problems. Unfortunately the transfer of women inmates from Charles Street is required in order to enable the Sheriff of Suffolk County to comply with federal constitutional law, and hence the considerations urged by the Commissioner and Superintendent, valid as we presume them to be, must yield.



A handful of vacancies at institutions other than MCI Framingham may be available on November 26, to which the Commissioner may send some of the women inmates. Space for one additional woman prisoner currently exists at the Salem County Jail and two at the Plymouth County Jail. When the new Worcester County Jail at West Boylston becomes operational on December 10, there are prospective vacancies for four female inmates. It was predicted yesterday that the new Middlesex County Jail will open during the spring of 1974, and probably space will be available there. Various defendants and their assistants are currently exploring possibilities of converting some public facility within Suffolk County into a jail for women. This order will also provide that the

Women's House of Detention under the control of the Boston Police Department be made available for the overnight lockup of women en route to or from Framingham or other institutions and for detention during trials lasting only a few days.

Finally, there is precedent for housing women awaiting trial at Framingham. According to an opinion of the Attorney General on April 12, 1968, found at 1966-69 Massachusetts Reports of Attorney General 186-188, during 1968 Rhode Island had an average population at its Women's Prison of about 17 persons daily, of whom about 8 were pretrial detainees. Rhode Island desired to close its Women's Prison and to transfer all its prisoners to MCI Framingham. Then Commissioner Gavin indicated to the

Attorney General that he could "very easily" handle all the prisoners who would be transferred under this procedure. While the situation at Framingham has changed in many ways since 1968, it does appear that there is nothing essentially incompatible with the rights of pretrial detainees in keeping them at the Framingham institution; and obviously problems of transporting inmates to trials in Suffolk County can be no greater than in transporting them to courts in Rhode Island.

The second subject considered in detail at yesterday's hearing was the capacity of the Charles Street Jail, including a section heretofore occupied by women, to keep men awaiting trial in separate cells on and after December 1, 1973, as required by the injunction

contained in the final judgment herein dated June 20, 1973. The problem is due mainly to the state of disrepair of one-quarter of the cells, such that only 201 are presently usable. The number of men confined at Charles Street Jail as of November 15<sup>1</sup> is 226, of whom 12 are serving sentences and 27 are federal prisoners. There is nothing in the judgments entered in these proceedings which prohibits the doubling up of inmates convicted of crimes, and we shall assume that 6 cells will be used for their confinement, leaving a total of 195 cells for 214 detainees and federal prisoners. Single occupancy can be

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<sup>1</sup> Of course the number of detainees, federal prisoners and persons serving sentences fluctuates; and there may be a greater or lesser number of inmates in any particular category as of the end of this month.

achieved by December 1 only by reducing the population of detainees and federal inmates to 195. As a practical matter, the population by December 1 must be reduced to approximately 190, leaving 5 or 6 empty cells, so that the defendants will not be in constant jeopardy of violating the court's order with the arrival of each new prisoner or the breakdown or destruction of the utilities in one or two cells. Thus the latter part of this order will require the defendants and the United States Marshal to take specific steps to make necessary reductions in the male population at Charles Street Jail.

In this respect also, the burden of responsibility will fall upon the defendant Commissioner of Correction because only he has the statutory

authority to make the necessary transfers. Under Mass. G.L. c. 276, § 52A, as amended, the Commissioner may, with the approval of the District Attorney, transfer to correctional institutions inmates who have been previously incarcerated in correctional institutions under sentence for a felony. A list of 36 such inmates was filed by Sheriff Eisenstadt at the commencement of the hearing yesterday, naming 20 inmates who had felony sentences at Concord, 12 at Walpole and 4 at Norfolk. There are currently approximately 174 vacancies for prisoners at Walpole and 66 at Norfolk; while there are none at Concord, there is no requirement in the statute that such inmates be transferred to the particular correctional institution in which they were previously confined. At the



hearing, Assistant District Attorney Thomas Dwyer, on behalf of District Attorney Byrne, gave approval as required by the statute to the transfer of such inmates to correctional institutions and the Commissioner is empowered to order their transfer forthwith. Under § 52A, as amended by c. 514 of the Acts of 1973, effective July 6, 1973, inmates awaiting trial may be transferred only by order of a Justice of the Superior Court. Without intimating any lack of jurisdiction to order in these proceedings that such inmates be transferred, there is no occasion for us to consider entry of any such order at this time. The number of transfers which the Commissioner will be required to make will be reduced to some extent by the court's order that the United States Marshal transfer some of

the federal prisoners at Charles Street before the end of the month.

The inconvenience to the Commissioner and to the courts which will undoubtedly be caused by transfers pursuant to §52A is expected to be temporary because 59 presently unusable cells can be repaired, 36 of them by work which can be accomplished within 30 workdays. Thus repairs which may be made before the end of the calendar year will increase the number of usable cells to 237, at which time the population at Charles Street can be stabilized at approximately 230 inmates. Repair of the cells which will take longer than 30 workdays to repair will increase the total number of usable cells to 260, permitting a population of about 250 inmates. These figures and the time

needed for repair are based upon statements made at yesterday's hearing by the senior construction engineer in charge of alterations and repair for the Department of Public Facilities. We anticipate that, as permitted in § 52A, the District Attorney will request the return of transferred inmates to Charles Street as soon as repaired cells become available.

Accordingly, it is ORDERED that:

1. Defendant Frank A. Hall, Commissioner of Correction, his assistants, agents and attorneys, on November 26, 1973 transfer to the Massachusetts Correctional Institution at Framingham or other state or county facility for the detention of women inmates, pursuant to the provisions of Mass. G.L. c. 276, § 52A, as amended, and

c. 127, § 97, as amended, or in any other manner found necessary to accomplish this order, all women confined to the Charles Street Jail as of November 26, 1973, whether serving sentences or awaiting trial.

2. Defendant Kevin H. White, Mayor of the City of Boston, and the City Councillors for the City of Boston,<sup>2</sup> their assistants, agents and attorneys, make any unused quarters in the Women's House of Detention available from and after November 26, 1973 for the keeping of women detained pending trial in any of the criminal courts located in Suffolk

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<sup>2</sup> Under Mass. G.L. c. 34, § 4, the Mayor and Councillors are county commissioners for Suffolk County and as such have executive as well as legislative powers. See, e.g., c. 34, § 14. Therefore the county's duty to provide "a suitable jail," c. 34, § 3, is partly the responsibility of the Mayor and City Councillors.

County, or pending transfer to a state or county jail facility.

3. Defendants Thomas S.

Eisenstadt, Sheriff of Suffolk County, and Harold V. Langlois, Master of the Charles Street Jail, their assistants, agents and attorneys, notify the Clerks of the courts in which women inmates are awaiting trial of the date of their transfer and the institution to which transferred.

4. Until further order of this court, United States Marshal John A. Birknes, Jr., his assistants, agents and attorneys (a) lodge at the Charles Street Jail no federal prisoners who have been convicted and are awaiting transfer to a federal institution, and (b) lodge at the Charles Street Jail no more than 20 federal prisoners of whatever status.

5. Defendant Frank A. Hall, Commissioner of Correction, his assistants, agents and attorneys, pursuant to Mass. G.L. c. 276, § 52A, as amended, and c. 127, § 97, as amended, transfer a sufficient number of inmates at Charles Street Jail awaiting trial, who have been previously incarcerated in a correctional institution of the commonwealth under sentence for a felony, to reduce the number of male inmates at Charles Street Jail to 190 by November 30, 1973 and make such further transfers as may be necessary in the future to maintain single cell occupancy at the Charles Street Jail.

6. Defendants Thomas S. Eisenstadt and Harold V. Langlois, their assistants, agents and attorneys, from and after November 30, 1973, keep and receive at



Charles Street Jail no greater number of inmates awaiting trial than will permit 5 cells there to remain vacant for use when occupied cells become unusable and in other emergencies, and notify defendant Hall immediately whenever it becomes necessary to transfer prisoners to another facility in order to maintain compliance with the order contained in this paragraph.<sup>3</sup>

\_\_\_\_\_  
/s/  
W. Arthur Garrity, Jr.  
United States District  
Judge

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<sup>3</sup> This memorandum and further order bears the date of November 16 because drafted on that date; however it was not filed with the Clerk or distributed to the parties until November 19, together with the notice as to the next hearing, which is being filed contemporaneously herewith.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

[Caption Omitted in Printing]

MEMORANDUM AND ORDERS<sup>1</sup> REGARDING  
RENOVATION OF CITY PRISON  
FACILITY AND CLOSING OF  
CHARLES STREET JAIL

June 30, 1977

GARRITY, J. On October 6, 1976, in an order of reference, the court appointed Edward F. McLaughlin, Jr., of Boston, a master in these proceedings for the following purpose, among others: "to hear the parties, and any experts or consultants called by them, regarding proposals and plans for the gradual closing of the Charles Street Jail and to report to the court his recommendations for orders to be entered by the court."

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<sup>1</sup> The orders are confirmatory of rulings made in open court on May 10, 1977 and recorded by the court reporter. See Local Rule 19(b).

Pursuant to this reference, the master filed three reports: on November 24, 1976, the Master's Report of Use of City Prison Facility; on March 29, 1977, the Master's Report Concerning Establishment of a Suffolk County Pretrial Detention Facility to Replace the Charles Street Jail; and on April 21, 1977, the Master's Report on Closing of Charles Street Jail.

At a hearing in these proceedings on April 14, 1977, the court, after eliminating Deer Island from consideration as a possible site for a facility to replace the Charles Street Jail, ordered the master to conduct further hearings and report with respect to possible legal objections to the use of a parcel of land on New Chardon Street as a site for a new jail facility.

At the same hearing, the court set down for hearing on May 10, 1977: (1) the defendant city council's motion filed April 12, 1977 for modification of the court's order of October 20, 1975 to postpone the deadline of July 1, 1977 set in that order for the closing of the Charles Street Jail; and (2) any objections filed to the master's November 24, 1976 report on use of city prison facility. In the interim, on April 21, 1977 the master filed his third report entitled Master's Report on Closing of Charles Street Jail, part of which contained further discussion of the city prison facility and renewed the recommendation that it be renovated and put into operation.

With respect to the master's November 24, 1976 report, only the

plaintiffs filed a timely objection, namely, that 15 days be fixed as maximum confinement in the city prison facility (as to which the court reserved decision until after the renovations should be completed). At the outset of the hearing on May 10, the Boston City Council handed up objections to the master's April 21, 1977 report, asserting that the master had not found that a renovated city prison would be "constitutionally preferential" to the existing Charles Street Jail and that renovation expenditures would be needless since the Charles Street Jail could house pretrial detainees under single cell occupancy. At the hearing on May 10, the court heard these objections and comments from various other parties. Then, acting pursuant to Rule 53(e)(2), Fed.R.Civ.P.,

the court accepted, with slight modifications, the master's November 24 report and ordered that the city prison be renovated and suitable for occupancy by November 1, 1977.<sup>2</sup>

Simultaneously, in connection with the city council's motion to postpone the July 1, 1977 deadline for closing the Charles Street Jail, the court also considered the master's April 21, 1977 report on closing of Charles Street Jail. After hearing the Boston City Council's

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<sup>2</sup> This order was based on acceptance of the master's finding at p. 9 of the April 21, 1977 report, unchallenged at the hearing, that the "only facility which is available for use in conjunction with the court-ordered closing of the Charles Street Jail is the City Prison Facility ..." and the court's judicial notice that public safety necessitates provision of an assured replacement detention facility where persons ordered committed after November 1, who are too dangerous for predisposition release, may be jailed.

objections and comments of other parties, the court, again acting pursuant to Rule 53(e)(2), generally accepted the master's findings but rejected his recommendation that Charles Street Jail remain open until a new permanent pretrial detention facility in Suffolk County has been completed.<sup>3</sup> For reasons stated at the hearing in open court and recorded by the court reporter, the court instead ordered that from and after November 1, 1977 no pretrial detainees or other prisoners be admitted to the Charles Street Jail.

#### ORDERS

At the court hearing on May 10, 1977, the following orders were entered:

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<sup>3</sup> In this respect, the court, for purposes of Rule 53(e)(2), considered paragraphs numbered 1-6 at pp. 12-13 of the master's April 21 report to be findings of fact and paragraphs numbered 7-9 at pp. 13-14 to be recommendations.

1. The defendant Mayor of Boston, in consultation with the defendant Sheriff of Suffolk County, shall forthwith submit to the Master and to the defendant Commissioner of Corrections such engineering and construction plans as may be required to permit the repairs and renovations to the city prison facility to be made.

2. The defendant Commissioner of Corrections shall, within one week following his receipt of the aforesaid plans, act upon those plans pursuant to M.G.L. c.34, §12.

3. The defendant Mayor of Boston, in consultation with the defendant Sheriff of Suffolk County, shall forthwith prepare and submit to the defendant Boston City Councillors as they are the Suffolk County Commissioners,



appropriation orders necessary to accomplish (a) the necessary renovations and acquisition of equipment to permit the city prison facility to be operational by November 1, 1977 and (b) recruitment and training of the additional personnel necessary for the proper operation of the city prison facility on an interim basis.

4. The defendants shall take such steps and expend such sums as are reasonable and necessary to complete the repairs and renovations and to provide the fixtures and furnishings which have been found to be necessary to the proposed use of the city prison facility.

5. The defendant Mayor of Boston shall use whatever emergency procedures are available to him and shall commence the said renovations and repairs

immediately and on an expedited basis in conformity with the plans submitted to the court.

6. The renovations and repairs to the city prison facility shall be completed not later than November 1, 1977. No prisoners may be admitted to the city prison facility prior to the completion of those repairs and renovations. Commencing immediately, the defendants shall file written progress reports with the Master on the 1st and 15th of each month.

7. The defendants shall report to the Master immediately concerning any delays in the scheduled renovations and repairs to the city prison facility, together with the reasons therefor and, if appropriate, any alternative or substitute materials or equipment which

may be available in order to speed completion of the renovations and avoid further delay.

8. The defendants shall report to the Master immediately concerning any unresolved dispute between or among them as to particular personnel, renovations or repairs which may be needed or any materials, equipment or fixtures which may be required.

9. On November 1, 1977 the city prison facility is to be placed in operation for the pretrial detention of some individuals who would otherwise be held at the Charles Street Jail.

10. The parties defendant are to use their best efforts, given all available resources, to place as many pretrial detainees as feasible in

supervised, community-based programs until their cases are reached for trial.

11. After November 1, 1977 no pretrial detainees or other prisoners may be admitted to the Charles Street Jail. Prisoners incarcerated there as of November 1, 1977 may be held there until criminal charges pending against them have been disposed of by the courts.

12. In order to prepare for the reduced jail capacity which will exist beginning November 1, 1977, the defendants Sheriff, Mayor, City Council and Commissioner of Corrections shall submit plans to the Master, according to a schedule determined by him, for processing and classifying pretrial detainees after November 1, 1977. This plan shall include criteria for selecting, from a given potential jail

population, those most in need of incarceration and contingency classification and selection procedures for a situation where a given potential jail population exceeds the number of cells available to house that population.

/s/  
United States District Judge  
W. Arthur Garrity, Jr.

[Certificate of Service  
omitted in printing.]

UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

Nos. 77-1361  
77-1362  
77-1363

THOMAS S. EISENSTADT, et al.,  
Appellants

v.

INMATES OF THE SUFFOLK COUNTY  
JAIL, et al.,  
Appellees.

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MEMORANDUM AND ORDER

Entered September 2, 1977

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Defendant-appellant Boston City  
Councillors urge us to stay two of Judge  
Garrity's orders of June 30, 1977, until  
we have heard their appeal:

1. The order that the defendants  
"take such steps and expend such sums as  
are reasonable and necessary to complete  
the repairs and renovations and to

provide the fixtures and furnishings which have been found to be necessary to the proposed use of the city prison facility", by November 1, 1977.

2. The order that "after November 1, 1977, no pretrial detainees or other prisoners may be admitted to the Charles Street Jail. Prisoners incarcerated there as of November 1, 1977, may be held there until criminal charges pending against them have been disposed of by the courts."

We see no reason to issue a stay of the second order. Certainly as far as pre-trial detainees are concerned, the substantive issues of this case have been resolved long ago. See Inmates of Suffolk County Jail v. Eisenstadt, 360 F. Supp. 676 (D. Mass. 1973). In that case

it was decided that incarcerating pre-trial detainees at the Charles Street jail violated the constitutional rights of the detainees and that such incarceration should be halted by June 30, 1976.

It is now September, 1977. The district court's order does not go into effect until November 1. Not only have defendants failed to present any evidence that they will suffer irreparable harm pending appeal but on any reasonable balance of the equities involved, it is the plaintiff class whose interests have been kept in a legal limbo while the court has attempted to accommodate constitutional requirements with the practical considerations preventing immediate redress. That class cannot be denied its rights interminably. As the



court explained in Rhem v. Malcolm, 507 F.2d 333 (2d Cir. 1974) when confronted with a similar situation involving New York city's infamous "Tombs" (Manhattan House of Detention for Men), "[P]re-trial detainees are people, not outcasts, who are presumed to be innocent of any crime and who have rights guaranteed by the Constitution, as do we all. When a district court is presented with a claim of violation of those rights, its proper function is to decide the case before it, whatever sympathy it may have for those who manage a great metropolis beset by grievous problems. Nor can similar considerations deflect us from the issues on appeal." Id. at 342.

While there is more of a substantive legal question as to the appropriateness of the district court's order as it

pertains to "other prisoners", defendants again fail to indicate what additional irreparable harm they, or anyone else, will suffer from the inclusion of "other prisoners" in the order. The appropriate time for evaluating the order, in these circumstances, will be when defendants' appeal is heard.

The request to stay the renovation of the city prison raises far more difficult problems. Clearly if a significant part of this work is completed before an appeal is heard, the question of whether or not to affirm the order for the renovation will be for all practical purposes moot. Courts are properly reluctant to order the expenditure of funds by a state or municipal body for major construction or renovation of prison facilities. Indeed,

several courts have disclaimed the power to do so. See Hamilton v. Love, 328 F. Supp. 1182, 1194 (E.D. Ark. 1971); Jones v. Wittenberg, 330 F. Supp. 707, 712 (N.D. Ohio 1971); aff'd sub. nom Jones v. Metzger, 456 F.2d 854 (6th Cir. 1972); Padgett v. Stein, 406 F. Supp. 287, 302-303 (M.D. Pa. 1975); accord, Detainees of Brooklyn House of Detention for Men v. Malcolm, 520 F.2d 392, 399 (2d Cir. 1975).

This court and others have, when necessary, ordered relief for prisoners that would require the expenditure of considerable funds. See Martinez Rodriguez v. Jimenez, 537 F. 2d 1 (1st Cir. 1976); Hamilton v. Landrieu, 351 F.Supp. 549 (E.D. La. 1972); Mitchell v. Untreiner, 421 F.Supp. 886 (N.D. Florida 1976). As was noted in Rhem v. Malcolm,

supra, at 341 n. 19, "[W]here the unconstitutionally-administered governmental function must be kept operating in any event . . . a court might have no choice but to order an expensive, burdensome or administratively burdensome remedy." The Supreme Court has approved such remedies in school desegregation suits on several occasions. See Milliken v. United States, 45 U.S.L.W. 4873 (June 27, 1977); Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964).

However, recognizing that a court has a particular authority or power says little about the guidelines under which it should be exercised. We have no reason to doubt the wisdom of the district court and the master's report in determining that the renovation of the

city prison is the only reasonable alternative for incarcerating pre-trial detainees after November 1. However, it may be preferable in this case to issue a more general order as to the standards that must be met before pre-trial detainees can be incarcerated after Charles Street jail ceases to be available. This would allow defendants to choose to renovate the City Prison, or to take other measures to provide for pre-trial detainee incarceration that would be constitutionally adequate. See Rhem v. Malcolm, supra, at 340-341.

Whenever possible these decisions should be left to the discretion of elected officials, acting within the mandate of the Constitution.

We reach this decision with reluctance, in light of the extensive

period of time during which the district court's efforts have not met with any forthcoming positive action to solve this long festering problem. We do so partly because of the imminence of the determination of the appeal and partly from our desire to give defendants the fullest measure of opportunity to fulfill Constitutional obligations and their responsibilities to the state and local community before requiring submission to an order of court.

To permit us to consider arguments that a less specific remedy should be ordered, we grant defendants' request for a stay of that part of the district court's order of June 30, 1977, requiring the renovation of the City Prison. Defendants' request that the order prohibiting the admission of pre-trial

detainees or other prisoners to the  
Charles Street jail after November 1 be  
stayed is denied.

By the Court,

/s/

Dana H. Gallup

Clerk

UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

[Caption Omitted in Printing]

MEMORANDUM AND ORDER

Entered: December 15, 1977

During argument, counsel for the Boston City Council, counsel for the Mayor, and counsel for plaintiffs, all indicated their basic agreement as to the ultimate goal of constructing constitutionally adequate jail facilities. It was stated that within a period of two months, it might well be possible to secure basic agreement on an acceptable plan of action ensuring the prompt construction of such needed facilities. A number of circumstances have arisen which give substance to this possibility. They include the coming into office of a new City Council; the detailed planning which has already been



done by city and county staff; and the pendency of federal legislation which would assist in financing a dual purpose institution.

Any such reasonable possibility of voluntary agreement cannot be overlooked in a case where the sole issue remaining before the courts is not whether to grant relief but the character of the relief to grant. The original Inmates case, decided by the district court several years ago, is the law of the case: we are not faced with deciding anew whether new jail facilities are constitutionally needed; the question is what type of judicial order is necessary and proper in order to achieve this goal. It follows that it will be in the interest of all parties if they can agree voluntarily among themselves on an acceptable program

of compliance. Voluntary agreement will avoid the necessity of strict court-ordered measures that may place heavy burdens and limitations upon the city.

Since it will, in normal course, request this court a period of several months to decide the pending appeals, we believe it appropriate, in order to avoid further loss of time, to request the parties to meet forthwith, while the appeals remain under submission, and see whether they can agree upon the main ingredients of a plan of action for the construction of adequate jail facilities. These would include an acceptance of both interim and long range goals as to the conditions of confinement within the projected facilities, settlement of a site and target dates for implementation of the plan, and, most important, a good

faith commitment to make sufficient funds available when final detailed plans have been approved. While recognizing that there may be considerable honest disagreement as to the nature and cost of the facility as reflected in the final plans, we would insist on a commitment to meet the funding requirements of a constitutionally adequate facility despite some possible uncertainty as to exactly what that would entail in final terms. We stress that we do not see how a court could accept, on this record, an interim solution involving the use of the Middlesex jail facilities, city prison, or the Charles Street jail, or any combination thereof unless there is a definite commitment to make available sufficient appropriations for a constitutionally adequate facility to be

constructed by a definite date in the future.

We request counsel to report their progress to this court and by March 3, 1978, at the latest, to file a joint report indicating whether they have reached agreement and, if so, attaching a copy of their understanding and timetable. If counsel have not reached agreement, but individual parties wish to submit plans that meet constitutional standards for consideration by the court, they may do so. Should a positive plan be individually or collectively filed, the court might well remand the matter to the district court for detailed development of the final plan. Since such a chain of events might effectively moot the appeals, this court undertakes not to render its decision on the pending

appeals until after March 3, 1978. If no plan, or a constitutionally inadequate one, is submitted, this court will proceed to decide the pending appeals, ordering implementation of such remedies as it finds to be necessary and appropriate.

The parties should understand that whatever the status of affairs by March 3, this court does not envisage further or protracted delay in this matter. Failing the cooperation and assistance of the various parties in developing and implementing a solution to the problem of pretrial detainee incarceration, this court will be left with no alternative but to authorize far reaching action by the district court.

The injunction of the district court  
is stayed until March 3, 1978.

By the Court

Clerk.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C.A. NO. 71-162-G

INMATES OF THE SUFFOLK COUNTY  
JAIL, ET AL.,  
Plaintiffs,

v.

DENNIS J. KEARNEY, ET AL.,  
Defendants.

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MEMORANDUM AND ORDERS AS TO  
PRETRIAL DETENTION CENTER

October 2, 1978

GARRITY, J. The defendants Mayor and City Council and Commissioner of Correction have fulfilled the conditions stipulated in the opinion of the Court of Appeals dated March 17, 1978. In particular, the Mayor and City Council have agreed on a site, viz., the present location of the Charles Street Jail. They have made a commitment to adequate

funding by the enactment of loan orders totalling \$15,400,000 for the planning, designing, constructing and originally equipping a pretrial detention center which in our opinion meets the constitutional requirements of pretrial detention. The projected target date for the beginning of construction is September 1, 1979 and for completion, March 1, 1982. The plan which the court finds to be constitutional was filed by the city defendants on September 28, 1978 entitled "Preliminary Architectural Program, Boston City Jail" (the "City Plan") and was enclosed with a letter dated September 27, 1978 from Donald E. Manson, director of the Public Facilities Department of the City of Boston. The plan is prefaced by a two-page letter from Fred A. Powers to the Public



Facilities Department dated September 26, 1978 and comprises 31 pages. The covering letter from Mr. Manson and the plan are attached hereto and incorporated in these orders, as Attachments A and B.

The Commissioner of Correction, acting pursuant to Mass. G.L. c. 34, §14, has approved this plan with the qualifications stated in his filing on September 28, 1978 entitled Preliminary Response of the Commissioner of Correction and in the accompanying detailed analysis prepared by architectural planner Maria Theresa Cruz. At the hearing on September 28, counsel for the Commissioner and the city defendants stated that they were confident that the relatively minor deficiencies in the plan recorded by the Commissioner would be cured during

implementation of the plan. The court therefore treats the Commissioner's preliminary response as the requisite statutory approval.

The court's conclusion that the City Plan meets constitutional requirements rests upon the filing heretofore described and the testimony at the hearing on September 28 of Fred A. Powers and on the positions of the parties stated at the hearing endorsing the City Plan. The plan is not an architectural design but rather a written description of the conditions of confinement of pretrial detainees as permitted in the opinion of the Court of Appeals dated March 17, 1978. The extent to which parts of the present Charles Street Jail will be renovated and the form of new

construction, e.g., whether or not high-rise, have not yet been decided by the planners. However, the critical features of confinement, such as single cells of 80 sq. ft. for inmates, are fixed and safety, security, medical, recreational, kitchen, laundry, educational, religious and visiting provisions, are included. There are unequivocal commitments to conditions of confinement which will meet constitutional standards. According to Mr. Powers, who was spokesman for the architects at the hearing, further refinements in the architectural program will be made in the near future, at latest within one month, and a final architectural program will be prepared as soon as possible.

The Court of Appeals also stated in its March 17, 1978 opinion that this

court should direct its attention to providing for an interim detention facility until renovation of the Charles Street Jail can take place, adding that such an interim facility could include use of the Charles Street Jail.

Consideration of that question at this time would be premature. Until the nature and extent of renovations and new construction have been decided, the impact upon detainees housed at the jail and possible impingement on their constitutional rights cannot be evaluated. For this reason the court did not rule upon a motion of the Boston City Councillors filed September 22, 1978 that detainees continue to be lodged at the Charles Street Jail pending the completion of the new facilities.

Finally, the record of these proceedings should reflect our opinion that the conditions specified by the Court of Appeals' would probably not have been met except for the skill and professionalism with which Edward F. McLaughlin, Jr., Esquire, served as master and the assistance of Peter M. Lauriat, Esquire his associate.

Accordingly it is ordered, adjudged and decreed as follows:

1. The City Plan filed September 28, 1978 is approved as satisfying the terms and conditions set forth in the opinion of the Court of Appeals dated March 17, 1978 and in other orders entered by this court and the appellate court.

2. On or before November 3, 1978 the city defendants shall file and serve

on the parties a modified architectural program and a modified estimated design schedule and shall file and serve a final program and schedule as soon as practicable.

3. The city, county and state defendants shall without delay take all steps reasonably necessary to carry out the provisions of said preliminary, modified and final architectural program and estimated design schedule.

4. In carrying out the City Plan the defendants shall not change or depart from it in any substantial way except after written notice to the parties and court approval.

5. The parties shall endeavor to agree within one month upon a procedure and mechanism for monitoring compliance with these orders, such as periodic

progress reports, perhaps filed jointly by some of the parties, perhaps to be filed in the first instance or only with Master McLaughlin. If they reach agreement, it should be filed with the clerk and the master. If agreement is not reached, separate proposals may be filed by any party on or before November 14, 1978.

6. While devising and executing the City Plan the defendants shall address explicitly its effect upon the inmates currently lodged at the Charles Street Jail and the conditions of their confinement. Programs and schedules shall contain subdivisions dealing with this subject. Pretrial detainees shall continue to be held at Charles Street Jail pending further order of the court. Any party may apply to the court for such

an order upon reasonable notice provided  
that the facts underlying any such  
application shall be set forth in  
affidavits.

/s/  
W. Arthur Garrity, Jr.  
United States  
District Judge



(Excerpt From Architectural Program; See  
First Circuit Record Appendix at pp. 185-  
189.)

Suffolk County Detention Center  
Charles Street Facility

Architectural Program

Honorable Kevin H. White  
Mayor of the City of Boston

Donald B. Manson  
Director of Public Facilities

A Joint Venture

Stull Associates &  
Hellmuth, Obata & Kassabaum

Architects and Planners

January 1, 1979

demonstrate the feasibility of fitting  
the program to the existing building.\*

In the course of doing this it may be  
found that certain portions of the

---

\* "Fire safety. The design and  
construction will meet the standards set  
out in the 1976 edition of the Life  
Safety Code of the National Fire  
Protection Association (publication 101-  
1976)."

present jail must be demolished for new construction, or that the program must be modified to fit the building.

Site Issues: Site circulation and entry for visitors, staff, prisoners and servicing must be analyzed as well as perimeter security. If proper enclosure for prisoner reception, exercise, and servicing can be achieved within the site, a more effective perimeter security concept could be considered other than the surrounding masonry wall.

Construction phasing: One of the most challenging aspects in the proposed renovation to the Charles Street Jail will be an evaluation of its potential for renovation if no new construction is planned. An analysis of the means to keep the existing facility in operation while portions are being renovated will

supply the needed information of possible additional costs and availability of temporary space.

Operating costs: Any analysis of new versus renovated old construction must include an evaluation of staffing implications in adopting the program components to the constraints of an existing structure. This will be compared to the staffing requirements as projected in the program.

State and National Standards: The following standards have been consulted as guidelines for the preparation of this program document. Particular attention has been given to program compliance to pre-trial detention and construction standards as legally mandated by the State of Massachusetts. These standards include the following:

A. Tentative Draft, Standards for  
County Correctional Facilities:

Department of Correction;  
Commonwealth of Massachusetts,  
1978.

B. Massachusetts Building Code:

Specific compliance to be met  
during design and contract  
document phase.

Other standards consulted:

A. Composite of all of these  
factors will impart the  
necessary direction that the  
planning team must take in  
applying this program to the  
Charles Street Jail.

B. Manual of Standards for Adult  
Local Detention Facilities:

Fourth draft; Commission on  
accreditation for corrections;

sponsored by the American  
Correctional Association; 1977.

- C. Detention/Corrections Sub-  
Committee Reports: National  
Sheriff Association; 1975.
- D. Report on Corrections:  
National Advisory Commission on  
Criminal Justice Standards and  
Goals; 1973.
- E. Tentative Draft of Standards  
Relating to the Legal Status of  
Prisoners: American Bar  
Association Criminal Justice  
Section; Joint Committee on  
Legal Status of Prisoners;  
American Criminal Law Review;  
Vol. 14, No. 3; Winter, 1977,  
pp. 377-625.
- F. Standards for Health Services  
in Correctional Institutions:

American Public Health  
Association; 1977.

CHARLES STREET JAIL POPULATION  
PROJECTIONS

The population projections developed in the course of this study are intended to provide a guide in determining the cell capacity needs for the Charles Street Jail. A description of the methodology and findings of the population study are contained in a separate report. This section summarizes the results of the study as they impact on projected cell capacity.

The following factors were considered important in the development of inmate population projections:

1. There is a historical and direct correlation between the

- number of people incarcerated and community demographics.
2. Within limits the capacity of the jail influences criminal justice practices.
  3. Population is a valid predictor of the number of persons incarcerated.
  4. Changes in the criminal justice system cause discontinuities in the number of people incarcerated.
  5. Population projections are subject to assumptions about past criminal justice practices.

Each of these factors were evaluated and considered in the development of the population study. This analysis included attention to "what if" questions

regarding possible changes in the criminal justice system.

Summary Findings and Recommendations

The following male inmate population projections have been prepared to the year 1999. The projections were developed using regression analysis, a technique for measuring the relationship between variables in (e.g., inmate and general population). It allowed for the development of statistically reliable projections of future jail population, they were then tested against past experience.

The population projections are representative of all persons detained in the jail. They include persons residing in intake, medical, regular housing, protective custody, etc. The projections represent an inmate count taken at



midnight which means certain people may have been processed at intake during the day and released prior to midnight. It is believed that the number of inmates within this category is insignificant.

The following summarizes the population projections to the year 1999.

Year	Population Projections
1979	245
1980	243
1981	241
1982	239
1983	238
1984	236
1985-89	232
1990-94	226
1995-99	216

The year selected as a basis for determining the jail capacity is 1983, since the proposed construction is estimated to be completed by this date. To arrive at the total number of male inmates to be accommodated, a standard error of estimate of 27, and a review of

daily population counts from 1970 through 1977 were considered, in addition to the base estimate for the year 1983. In other words, if 27 was added to the base projection of 238 for the year 1983, we could expect the projections to be accurate to the extent that actual population would not exceed the projected amount of 265 ( $238 + 27$ ) by more than an average of 62 days per year. Finally, seven persons have been added to the above to further account for extreme capacity fluctuations.

The resulting population has been the basis for programming cell space throughout the proposed detention center. It will accommodate anticipated male population needs beyond 1983, since a declining population is projected.

The population study evaluated past detention practices for female inmates. By applying the same methodology as was developed for the male population study, the study found that a capacity of 16 inmates will accommodate the female population needs through the year 1999.

(Excerpt From Architectural Program; See  
First Circuit Record Appendix at pp. 234-  
240.)

Suffolk County Detention Center  
Charles Street Facility

Architectural Program

Honorable Kevin H. White  
Mayor of the City of Boston

Donald B. Manson  
Director of Public Facilities

A Joint Venture

Stull Associates &  
Hellmuth, Obata & Kassabaum

Architects and Planners

January 1, 1979

F. Housing Units - Male

[DIAGRAM: See Joint Appendix at p.249]

- \* "Inmate laundry rooms shall be located to permit convenient access and staff supervision. Room placement and the number of laundry rooms required shall be resolved during the design phase. Each inmate laundry room shall contain high quality washing and clothes drying equipment, sink, sorting table, storage and ironing board."

F. Housing Units - male

General

Since the housing unit is where the inmate will spend most of his time while in the institution, it is the area most sensitive to design considerations.

Inmate activities which programmed spaces must respond to include the following:

1. Single occupancy rooms,  
including furnishings for  
sleeping, reading and writing.  
Storage for clothing and other  
personal items. Toilet and  
lavatory normalized to the  
degree possible.
2. Showers.
3. Small group meetings.
4. Passive recreation, i.e.  
reading, table games,  
television.

5. Dining.
6. Inmate/attorney visits.
7. Pay telephone access from within housing units.
8. Provisions for inmate cleaning own clothing-(see section 2.0.2 for requirements).
9. Responsive to differential security and inmate classification.
10. Temperature, lighting, and acoustical qualities per applicable standards.

It is recommended that a modular housing concept be developed to accommodate the above requirements. If a basic housing module is developed that meets the basic activity and constitutional requirements, the needs for different security and classification

requirements can be met by assignment procedures.

As the housing modules are developed during the design phase, certain units may require more or less security hardware and material requirements which should be carefully coordinated with the Sheriff's detention staff. These changes can be accomplished without detracting from the modular concept.

The housing module as proposed is based on 16 inmates per sub-living unit with two sub-units, or 32 persons representing a housing module. The housing module shall be supervised from one staff station. During the schematic design phase, and after careful study of the Charles Street site and the existing jail, it may be concluded that a sub-unit size of 18, 20, 22, or 24 may be more

appropriate. Such changes can be easily made without affecting the program integrity or significantly altering the enclosed space requirements. The goal should be to achieve the best staff/inmate ratio without compromising the constitutional rights of the inmate, or the small scale groupings as are desired.

\*

Architectural Requirements	Area/Sq.ft.
*F. 1.a. Inmate rooms (32@70 sq. ft.)	2240
F. 1.b. Showers (4@40 sq. ft.)	160
F. 1.c. Dayroom (2@600 sq. ft.)	1200
F. 1.d. Janitor's closet (2@40 sq. ft.)	80
F. 1.e. Dining/multi-purpose	600
F. 1.f. Storage	50
F. 1.g. Food cart/trash	50
F. 1.h. Attorney/interview rooms (2@60)	120



F. 1.i. Control room/sally ports (As required per design concept)	200
F. 1.j. Staff toilets	60
Total net area	<u>4,760</u>
Total housing modules required:	7.75
Total net area	36,890

\*The single occupancy rooms have been sized to meet the minimum standards as devised by the following standard setting agencies. The Massachusetts Department of Correction's Code of Human Services Regulations, Chapter IX - Standards for County Correctional Facilities, Standard 972.3 calls for a minimum of 70 square feet for all new cell design. The Manual of Standards for Adult Local Detention Facilities, Standard 5103, as sponsored by the American Correctional Association requires at least 70 sq. ft. of floor

space when confinement exceeds 10 hours per day.

#### Functional Requirements

##### F. 1.a. Inmate rooms

Each inmate room shall contain a rigidly constructed bed frame, a toilet, a lavatory with hot and cold running water, a table and seat, a shelf for the storage of personal belongings, a mirror, and towel and clothing hooks. Each room shall have an exterior window with an unobstructed view of the site.

Artificial lighting shall be sufficient for reading purposes, no less than 100 foot candles at desk level shall be provided. Two sources of artificial illumination shall be in the room with one light under the inmates control.

Room doors shall have remote release type locks which can be opened and controlled

from the housing control station.

Selection of door type and hardware shall be coordinated with the Sheriff's department and meet applicable codes. \*

F. 1.b. Showers

Accommodating 8-12 persons, depending on unit size design, each shower room will be adjacent to group space. Shower room fixtures and hardware should be consistent with security needs and should be designed for relative privacy and constructed so water does not drain into adjacent areas. Showers should have automatic water shut off as well as remote water turn off controls in the staff control room. They should include a seat and non-removable soap dish.

F. 1.c. Dayroom

Each sub-living unit shall have a dayroom for informal recreational activities. Furnishings shall include seating and lounge tables consistent with security requirements established for the unit. Dayrooms shall include audio communications with the housing control station and electrical outlets for television. \*

F. 1.d Janitor's closet

Equipped with mop sink and storage shelf.

F. 1.e. Dining/multi-purpose

Sturdy, but movable tables and chairs shall accommodate dining and group meetings. Seating shall accommodate a minimum of 16 people, or one sub-living unit. Food shall be carted to unit dining room and re-heated. Dining room

shall include kitchenette equipped with sink, storage cabinets, electrical outlets, small refrigeration and beverage dispenser. Dining room floor material should consider appropriate maintenance requirements.

F. 1.f. Storage

This room shall provide storage space for miscellaneous housing unit supplies.

F. 1.g. Food storage/trash

Space and electrical outlets for cart storage and trash disposal.

F. 1.h. Attorney interview rooms

Access from dining/multi-purpose room. Accommodating contact visits, acoustical control shall assure attorney/client confidentiality. Visual supervision maintained by staff.

Consider locating within entrance sally port to housing unit.

F. 1.i. Control room/sally port

The number, size and location of control rooms may vary with respect to the housing unit design. Control room should be designed to permit maximum visibility to housing unit. Audio communication should be maintained between staff and inmates with housing unit. Room shall be equipped with appropriate electronic monitoring and control systems, writing surfaces, telephone, and storage cabinets for first-aid and other supplies.

Sally port should be in interlocking door, separated enough to allow passage of an ambulance cot.

F. 1.j. Staff toilet

Should be adjacent to control room  
equipped with 1 w.c. and 1 lav.

- \* "Although exceptions may arise from scale considerations, all services and amenities should remain the same as for the male housing units."
- \* "Inmate laundry rooms shall be located to permit convenient access and staff supervision. Room placement and the number of laundry rooms required shall be resolved during the design phase. Each inmate laundry room shall contain high quality washing and clothes drying equipment, sink, sorting table, storage and ironing board."

(Excerpt From Architectural Program; See  
First Circuit Record Appendix at pp. 241-  
244.)

Suffolk County Detention Center  
Charles Street Facility

Architectural Program

Honorable Kevin H. White  
Mayor of the City of Boston

Donald B. Manson  
Director of Public Facilities

A Joint Venture

Stull Associates &  
Hellmuth, Obata & Kassabaum

Architects and Planners

January 1, 1979

G. Housing Unit - Female

The goals and objectives for the housing  
unit for men should be the same for women  
as for men.\* The exceptions may arise  
from scale considerations. As  
classification and security requirements  
are further designed it may be necessary  
to sub-divide further the 16 woman unit



as programmed. These decisions should be carefully coordinated with the Sheriff's department.

Architectural Requirements		Area/ Sq. ft.
G. 1.a.	Inmate rooms (16@70 sq. ft.)	1120
G. 1.b.	Showers (2@40 sq. ft.)	80
G. 1.c.	Dayroom	600
G. 1.d.	Janitor's closet	40
G. 1.e.	Dining/multi-purpose	320
G. 1.f.	Storage	50
G. 1.g.	Food cart/trash	50
G. 1.h.	Attorney/interview room	60
G. 1.i.	Control/sally port (As required per design concept)	200
G. 1.j.	Staff toilet	60
Total net area		<hr/> 2,580
Functional Requirements		
★		

Notes same as for Typical Housing Unit - male.

[DIAGRAM: See Joint Appendix at p.250]

\*"Inmate laundry rooms shall be located to permit convenient access and staff supervision. Room placement and the number of laundry rooms required shall be resolved during the design phase. Each inmate laundry room shall contain high quality washing and clothes drying equipment, sink, sorting table, storage and ironing board."

(Excerpt From Architectural Program; See  
First Circuit Record Appendix at pp. 356-  
372.)

Suffolk County Detention Center  
Charles Street Facility

Architectural Program

Honorable Kevin H. White  
Mayor of the City of Boston

Donald B. Manson  
Director of Public Facilities

A Joint Venture

Stull Associates &  
Hellmuth, Obata & Kassabaum

Architects and Planners

January 1, 1979

Floor Plan of Nashua Street Jail

[DIAGRAM: See Joint Appendix  
at pp. 251-258]

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C.A. NO. 71-162-K

INMATES OF THE SUFFOLK COUNTY  
JAIL, ET AL.,  
Plaintiffs,

v.

DENNIS J. KEARNEY, ET AL.,  
Defendants.

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PLAINTIFFS' MOTION TO  
MODIFY CONSENT DECREE

Plaintiffs hereby move this Court to modify the Architectural Program which was incorporated into the Consent Decree entered in this action, in several respects. In support, plaintiffs say as follows:

1. The present architectural plans for the new Suffolk County Detention Center were made pursuant to the

Architectural Program and provide for a total of 309 cells.<sup>1</sup>

2. The decision to design a facility of this size was based on a forecast of the projected need for pretrial detention facilities prepared by Peat, Marwick, Mitchell and Company.

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<sup>1</sup> The Architectural Program provided for a total of 303 cells. See p. 5 (290 cells for male and female regular housing, intake and protective custody) and p. 31 (13 cells in medical unit). The architects' first schematic design, however, provided for 309 cells. All parties signed off on the schematic design in June, 1980. The breakdown of the 309 cells by function is as follows:

Regular Male Housing	224 cells
Male Holding (48 hour)	32 cells
Regular Female Housing	16 cells
Protective Custody	8 cells
Disciplinary Segregation	16 cells
Medical Unit:	
Infirmary	
Male Patient Care	5 cells
Female Patient Care	2 cells
Psychiatric Observatoin	6 cells

(See pp. 3-5 of the Architectural Program).

3. The present jail has a capacity of 266 detainees based on the single cell occupancy order of November 16, 1973 of this Court. Recently, it has become increasingly more difficult for the Sheriff to comply with the 266 population limit.<sup>2</sup> Furthermore, statistics prepared by the Sheriff's staff indicate that since 1980 the average number of detainees committed per day to the custody of the Sheriff has been as follows:

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<sup>2</sup> Pursuant to M.G.L. c.276 §52A, the Sheriff has regularly transferred detainees, who have previously been incarcerated in state prisons on felony convictions, to state prisons. In addition, the Sheriff has made arrangements with some of the county jails to accept some Charles Street Jail detainees.

1980	190
1981	227
1982	281
1983	300
1984	320

4. It has become clear that in light of these statistics and the continuing population pressures, the planned 309 cell jail will be inadequate to house all Suffolk County detainees in conditions that meet the standards established in this case.

5. With respect to the funding of the new facility, the \$15.4 million appropriated by the City defendants will not cover the cost of the planned facility. On February 7, 1985 the Governor submitted a Special Act to the legislature to appropriate \$28 million for the new jail only on the express condition that the new jail be expanded to 435 cells.

6. In view of the population figures and the necessity of state funding for this project, plaintiffs move for the following modifications with respect to the housing units, the support services, and the construction timetable:

A. Housing Units

1. Male: On page 38 of the Architectural Program, the "Total housing modules required" to be modified by deleting "7.75" and inserting "12.25" in its place and the "Total net area" to be modified by deleting "36,890" and inserting "58,310" in its place.

2. Female: On page 42 of the Architectural Program, the number of inmate rooms (line 6



G.l.a.) to be modified by deleting "16" and inserting "30" in its place. The square feet of inmate rooms is therefore to be changed from "1120" to "2100", and the "Total net area" to be changed from "2,580" to "3560"<sup>3</sup>

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<sup>3</sup> These changes add 126 cells to the jail, bringing the total to 435. The breakdown according to function is as follows:

Regular Male Housing	320 cells
Male Holding (48 hour)	32 cells
Regular Female Housing	30 cells
Protective Custody	8 cells
Disciplinary Segregation	32 cells
Medical Unit:	

Infirmary

Male Patient Care	5 cells
Female Patient Care	2 cells

Psychiatric Observation 6 cells

B. Support Services

1. Indoor Exercise: On page 52 of the Architectural Program the size of the gymnasium is modified by deleting "4,200" square feet and inserting "4,600" square feet in its place. The total net area is changed from "6,080" to "6,480."<sup>4</sup>
2. Chapel: On page 55 of the Architectural Program, the size of the Chapel (line L.1.a.) to be modified by deleting "600"

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<sup>4</sup> No further changes in the outdoor exercise space because in the current design for 309 cells the outdoor exercise space has been substantially enlarged from the 7,680 square feet set forth in the Architectural Program at p. 50. The current design provides for 12,480 square feet at ground level, 3,481 square feet at the roof top and 1,740 square feet for protective custody inmates.

square feet and inserting "850" square feet in its place. The "Total net area" to be changed from "950" to "1100."

3. Laundry: On page 65 of the Architectural Program, the size of the Central Laundry (line 0.1.) to be modified by deleting "500" and inserting "1400" square feet in its place and the "Total net area" to be changed from "800" to "1700" square feet.

4. Kitchen: On page 62 of the Architectural Program, the receiving room (line N.1.a.) to be modified by deleting "200" and inserting "800" square feet in its place, the dry storage (line N.1.b.) to be modified by

deleting "600" and substituting "800" square feet in its place, the refrigerated storage (line N.1.c.) to be modified by deleting "250" and inserting "300" square feet in its place, the cart storage (line N.1.h.) to be modified by deleting "200" and inserting "300" in its place and the total net area is thus to be changed from 4,010 to 4,960" square feet.

5. Intake: On page 19 of the Architectural Program, the "temporary holding/court transfer (line C.2.e.) to be modified by deleting "250" and inserting "325" square feet, by eliminating lines C.4.a.,

C.4.b., and C.4.c. which are to be included in the male housing unit, and by eliminating lines C.7.a. and C.7.b.

6. Library/Education: On page 47 of the Architectural Program, the Legal Library (line I.2.b.) to be modified by deleting "350" and inserting "400" square feet and adding a second inmate toilet (line I.2.f.) with each toilet to be 50 square feet.

7. Support Services to Female Housing Unit: On page 42 of the Architectural Program, the Showers (line G.1.b.) to be modified by deleting 2 and inserting 4, bringing the square footage to 160 and the

dayroom (line G.1.c.) and dining/multi-purpose (line G.1.e.) to be combined and total 3600 square feet. A second attorney/interview room (line G.1.h.) to be added to make it 120 square feet.

8. Central Receiving: On page 68 of the Architectural Program, the receiving dock (line P.1.a.) to be modified by deleting "600" and inserting "675" square feet, the general storage (line P.2.a.) to be modified by deleting "1,000" and inserting "3,000" square feet and the building maintenance shop (line P.2.b.) to be modified by deleting

"600" and inserting "3000"  
square feet.

9. Visiting: On page 58 of  
the Architectural Plan, the  
contact visiting (line M.l.e.)  
to be modified by deleting  
"1600" and inserting "2300"  
square feet, non-contact  
visiting (line M.l.f.) to be  
modified by deleting "320" and  
inserting "720" square feet,  
attorney/interview rooms (line  
M.l.g.) to be modified by  
deleting "240" and inserting  
"960" square feet. Lines  
ML1.a., M.l.b., and M.l.c., to  
be eliminated from visiting and  
included in the lobby area.

C. Timetable for Construction

Pages 5 and 6 of the Consent Decree (paragraph 4) to be modified by deleting the timetable and substituting the following schedule:

<u>ACTIVITY</u>	<u>DURATION</u>	<u>COMPLETION DATE</u>
1. Modification of plans	3 months	April 21, 1985
2. Value Engineering Review	6 weeks	June 3, 1985
3. Completion of all details	2 months	Aug. 3, 1985
4. Review by all parties	1 month	Sept. 3, 1985
5. Incorporation of final documents	1 month	Oct. 3, 1985
6. Bid process	2 months	Dec. 3, 1985
7. Contract awarded, Construction Starts	1 month	Jan. 3, 1986

In all other respects the Architectural Program and the Consent



Deree shall govern the new Suffolk County Detention Center.

This motion has been assented to by the Commissioner of Correction and the Sheriff of Suffolk County.

Respectfully submitted,

/S/

Max D. Stern  
Lynn Weissberg  
Stern & Shapiro  
80 Boylston St.  
Suite 910  
Boston, MA 02116

617/542-0663

[Certificate of Service  
Omitted in Printing]

Date: February 19, 1985

[Burns & Levinson  
Letterhead]

April 5, 1985

BY HAND

Clerk's Office, Civil  
United States District Court  
1525 John W. McCormack POCH  
Boston, MA 02109

Re: Inmates of the Suffolk County Jail,  
et al.

Vs: Dennis J. Kearney, et al.  
Civil Action No. 71-162-K

Dear Sir/Madam:

Enclosed for filing in regard to the  
above-captioned matter please find: (1)  
Memorandum of the Sheriff of Suffolk  
County in Support of its Proposed Form of  
Order Modifying the Consent Decree of May  
7, 1979 and (2) Order Modifying the  
Consent Decree of May 7, 1979.

Kindly acknowledge receipt of the  
same by returning the enclosed postcard.

Thank you for your cooperation in  
this matter.

Sincerely,

Chester A. Janiak

CAJ/ljr  
Enclosures  
4706-10

cc: Lynn Weissberg, Esq.  
Stephen Ostrach, Esq.  
Michael Bolden, Esq.  
Michael Walsh, Esq.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

[Caption Omitted in Printing]

MEMORANDUM OF THE SHERIFF  
OF SUFFOLK COUNTY IN SUPPORT  
OF ITS PROPOSED FORM OF ORDER MODIFYING  
THE CONSENT DECREE OF MAY 7, 1979

The proposed form of order ("the Order") of the Sheriff of Suffolk County ("the Sheriff") should be adopted by this Court for the following reasons.

First, the Order, by including within it the Architectural Program and by providing for proportional changes in the Architectural Program to accommodate any increase in the number of cells from the 309 cells provided for in the Consent Decree, insures that the members of the inmate class are protected by providing for a facility which has already been adjudicated to meet constitutional standards and also insures that the

Sheriff will be provided with a facility that meets or exceeds contemporary correctional standards.

Second, the Order provides that those design issues which do not impact upon the inmate population involving administrative support space, shall be resolved by the user of the Jail, the Sheriff, and the supplier of the Jail, the Public Facilities Department of the City of Boston.

Third, the Order does not include within it architectural plans or drawings nor a schedule, thus, (one hopes) obviating the necessity of returning to this court each time, as is bound to happen in a project of this size and complexity, changes are made in plans or schedules. Further, members of the inmate class are fully protected with

respect to scheduling by the existing orders of the Supreme Judicial Court, which included in its order of January 21, 1985, a schedule for the commencement of construction of a new Suffolk County Jail.

Respectfully  
submitted,  
THE SHERIFF OF  
SUFFOLK  
COUNTY  
By his attorneys

/s/  
Theodore Tedeschi  
Chester A. Janiak  
BURNS & LEVINSON  
50 Milk Street  
Boston, MA 02109  
(617) 451-3300

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

[Caption Omitted in Printing]

ORDER MODIFYING THE  
CONSENT DECREE OF MAY 7, 1979

It is hereby ordered, adjudged and  
decreed as follows:

1. Nothing contained in the  
Consent Decree shall prevent  
the defendants from increasing  
the capacity of a new Suffolk  
County Jail ("the Jail")  
provided that

- (a) single-cell occupancy  
is maintained in the  
design of the Jail;
- (b) the standards and  
specifications of the  
Architectural Program  
included in the  
Consent Decree are

modified so that the relative proportion of cell space to support services for inmates will remain the same as it is in the Architectural Program;

- (c) the design and size of administrative support space for staff personnel of the Jail shall be as determined by the Sheriff of Suffolk County and the Public Facilities Department



-109-

of the City of  
Boston.

DATED: \_\_\_\_\_

\_\_\_\_\_  
United States  
District Judge

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

[Caption Omitted in Printing]

ORDER  
April 11, 1985

After considering plaintiffs' motion to modify the Consent Decree in light of changed circumstances, the Boston City Council's opposition thereto, and the views of all parties, the court finds that modifications are necessary to meet the unanticipated increase in jail population and the delay in completing the jail as originally contemplated.

It is therefore ordered, adjudged and decreed that the Consent Decree be modified as follows:

Nothing contained in the Consent Decree, however, shall prevent the defendants from increasing the capacity

of the new facility if the following conditions are satisfied:

(a) single-cell occupancy is maintained under the design for the facility;

(b) under the standards and specifications of the Architectural Program, as modified, the relative proportion of cell space to support services will remain the same as it was in the Architectural Program;

(c) any modifications are incorporated into new architectural plans;

(d) defendants act without delay and take all steps reasonably necessary to carry out the provisions of the Consent Decree according to the authorized schedule. In the absence of modification(s) of the schedule hereafter

ordered or authorized by this court, or by a court of the Commonwealth of Massachusetts, the schedule will be as stated below. Any modification(s) of this schedule ordered or authorized by a court of the Commonwealth will automatically amend, as well, the schedule authorized under this order, unless one of the parties in this action files a written objection, together with a memorandum fully explaining the grounds of objection, within 30 days after entry of the modifying order or authorization, or such lesser time period as may be fixed by this court upon motion showing cause for more expeditious resolution of any disputed issue.

<u>STEP</u>	<u>COMPLETION DATE</u>
a. Final Architectural Plans	April 21, 1985

- b. Value Engineering Review June 3, 1985
- c. Completion of all details August 3, 1985
- d. Review by all parties September 3, 1985
- e. Incorporation of all final documents October 3, 1985
- f. Bid process December 3, 1985
- g. Contract awarded, Construction starts January 3, 1986
- h. Construction of facility January 3, 1990

/s/  
Robert Keeton  
United States  
District Judge

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

[Caption Omitted in Printing]

AFFIDAVIT

I, Newman Flanagan, hereby depose  
and say to the best of my knowledge and  
belief:

1. I am the District Attorney of  
Suffolk County.
2. It is my understanding that  
Sheriff Rufo intends to ask  
this Court to allow him to  
house up to 673 prisoners in  
the new facility. I strongly  
endorse his request.
3. The dramatic increase in  
serious crime in Suffolk County  
has caused a backlog in Suffolk  
Superior Court and a resulting  
overcrowding problem at Charles  
Street Jail. This has resulted

in the release of prisoners back to the community after the "cap" was reached and no other institution had space available for a transfer. This has increased the risk to the security of the public. If this policy of mandatory release continues, a high profile tragedy is inevitable.

4. Sheriff Rufo has been placing prisoners in available space in other facilities whenever possible to minimize the number subject to mandatory release. This practice has caused delays in transporting these transferred prisoners to court on time with resulting down

time of our limited judicial  
resources.

5. In an effort to reduce the gang violence that is plaguing Roxbury, Mattapan and Dorchester, I have prioritized the prosecution of crimes committed by known gang members. A task force has been created to identify these gang members and to proceed with their cases by direct presentment to the Grand Jury. I intend to seek bail in an amount that will insure pre-trial detention and speedy trial. This will, no doubt, exacerbate the problem of jail overcrowding.



6. The Sheriff has informed me that procedural safeguards will be in place in respect to which prisoners will or will not be double bunked. The cell space in the double bunked cells appears to be adequate. The sheriff's request is certainly reasonable especially when considered with respect to the safety of the public.

For the foregoing reasons, I ask this court to allow the sheriff's request to house 673 prisoners in the new facility.

/s/  
Newman Flanagan  
District Attorney

[Jurat Clause Omitted in Printing]

AFFIDAVIT OF GEORGE A. VOSE, JR.

I, George A. Vose, Jr., being sworn,  
depose and state as follows:

1. I am currently the Acting  
Commissioner of the Massachusetts  
Department of Correction (Department). I  
am scheduled to be sworn in as  
Commissioner on July 10, 1989.

2. Prior to my appointment to the  
position of Commissioner, I served as  
Deputy Commissioner, beginning in  
February, 1986. I have been employed by  
the Department since 1974.

3. Attached hereto as Table 1 is a  
chart comparing monthly inmate population  
totals for Department facilities to the  
total capacities for these facilities.  
This chart reflects a steadily increasing  
rate of overcrowding in Department  
facilities over the last ten years. In

January, 1979, population was 97.7% of capacity. In January, 1984, population was 148.6% of capacity. In January, 1989, it was 177.8% of capacity. As of May 31, 1989, it was 183.3% of capacity.

4. This increase in overcrowding has occurred despite the raise in capacity of 1061 (or 37.1%) in Department beds - from 2857 to 3918-over the last ten and one-half years, and the raise in capacity of 623 (or 18.9%) since January, 1987, alone. (This figure does not include an additional 605 modular beds for Department inmates which have been added since January, 1987).

5. As of May 31, 1989, there were additional cells in five Department facilities which were under construction, with a total planned capacity of 624 inmates. Also as of that date there were

additional cells in six Department facilities which were both planned and funded, with a total capacity of 735 inmates. There were also 870 modular beds which were both planned and funded for Department inmates as of July 6, 1989.

6. Attached hereto as Table 2 is a chart detailing the projected yearly average populations of Department inmates from 1989 through 1998. This projection indicates an increase of 24.2% (from 7573 to 9407 in the number of Department inmates over the next ten years. Accordingly, currently planned construction of both permanent and temporary beds will still not approach projected inmate population figures.

7. As a result, Department facilities, overcrowded as they are and

as they will be, as indicated by these figures, offer little in the way of convenient or viable alternatives for the temporary housing of county inmates. County inmates in such cases often need to be transported to far distant Department facilities. They are almost never given a single cell, and instead are often given a bed in a dormitory-style setting. The addition of county inmates to Department facilities also exacerbates the stress and strain already present among Department inmates and personnel as a result of the presently overcrowded Department facilities.

/s/  
George A. Vose, Jr.

[Jurat Clause Omitted in Printing]

[CHART: See Joint Appendix at p.259]

AFFIDAVIT

I, Francis M. Roache, being duly sworn, do hereby state and depose that: I am the Police Commissioner for the City of Boston pursuant to Chapter 322 of the Acts and Resolves of 1962, with all the statutory duties and responsibilities enumerated therein.

The Boston Police Department will be negatively impacted by a decision to deny double bunking of prisoners at the new jail on Nashua Street. This Department has had an increase in arrests in each of the last three years. In 1986 there were 25,790 arrests for Part One and Part Two crimes. By 1988 that figure had risen 19% to 30,729. The figure for 1989 to date is 10,639 - an 11% increase over the comparable period in 1988. This increase in arrests translates directly into an

increase in the need for available beds for pre-trial detainees, a fact of which the Boston Police Department is painfully aware due to its own problems with overcrowding in pre-arraignment holding cells.

The most obvious result of overcrowding is the release of individuals back onto the streets prior to trial, either through a judicial reluctance to set bail due to the lack of space or forced release due to a number of prisoners in excess of the the court mandated cap. Projections of inmate population numbers establish clearly that without double bunking, the new facility will be over capacity when opened and the problem of release of detainees will continue. This is clearly both a logistical and a public safety problem.

Even if beds are available in other jails, valuable time and resources are expended transporting prisoners across the state; money and manpower which ought to be used on addressing the needs of the inmates in the Suffolk County Jail.

In addition, any time an inmate is released due to the cap, an individual who was determined by the courts to be inappropriate for return to the streets prior to trial, either due to a concern over appearance in court or as a threat to the community, sidesteps the judicial system and becomes a concern once again for the Boston Police Department and the community it serves. The "revolving door" which is perceived by police officers and the public as a result of inadequate jail space erodes the confidence of both the law enforcement



professional and the citizen in the quality and consistency of the judicial and correctional systems.

The existing court order is the result of a particular, unique set of circumstances which existed at the Charles Street Jail. The new facility has been very carefully designed to provide a safe and appropriate environment for inmates in anticipation of double bunking. There is no argument against double bunking which can justify the burden which would be imposed on the public by the overcrowding of the new jail facility and the resulting transportation or early release of inmates.

Date: 6/30/89

\_\_\_\_\_/s/  
Francis M. Roache  
Policy Commissioner  
City of Boston

[Jurat Clause Omitting in Printing]

# ADMISSIONS BY OFFENSE

1988

	HOMICIDE			MANSLAUGHTER			RAPE/ SEX ASS.			CRIMES AGAINST PERSON			DRUGS: POSSESSION			DRUGS: INTENT TO DISTRIBUTE			CRIMES AGAINST PROPERTY			LARCENY			OTHER			TOTAL ADMISSIONS PER MONTH		
	#	%	#	#	%	#	#	%	#	#	%	#	#	%	#	#	%	#	#	%	#	#	%	#	#	%	#	%	#	

January	5	.9	0	0	0	15	2.6	137	25.6	24	4.4	111	2.1	41	7.8	10	1.7	39	7.5	135	25.9	517
February	11	1.9	0	0	28	4.7	150	25.9	27	4.4	100	17.4	45	7.8	12	2.0	52	9.1	144	24.7	569	
March	8	1.2	0	0	25	3.7	173	26.7	47	7.2	142	22.2	40	7.2	13	1.9	67	10.5	119	18.2	634	
April	6	1.1	0	0	19	3.3	159	29.3	34	6.2	104	19.5	31	5.8	10	1.7	57	10.6	108	19.7	528	
May	3	.5	0	0	23	3.7	170	27.8	28	4.7	110	18.8	30	5.1	12	1.9	68	11.6	135	22.7	579	
June	9	1.5	0	0	25	4.0	162	27.10	48	7.7	121	20.4	39	6.6	13	2.1	40	6.3	129	20.8	586	

	HOMICIDE				MANSLAUGHTER				RAPE/ SEX ASS.				CRIMES AGAINST PERSON				DRUGS: POSSESSION				DRUGS: INTENT TO DISTRIBUTE				CRIMES AGAINST PROPERTY				LARCENY				OTHER				TOTAL ADMISSIONS PER MONTH	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%				
July	0	0	0	0	0	0	0	0	26	4.2	181	30.2	29	4.8	111	19.5	54	9.3	19	3.1	59	10.1	99	16.2	578													
August	8	1.0	1	.1	32	4.2	232	30.3	44	5.6	138	18.4	56	7.4	13	1.7	71	9.4	154	20.3	749																	
September*	13	2.0	0	0	24	3.6	170	26.1	51	7.7	137	21.2	46	7.0	7	1.0	66	10.1	35	5.4	549																	
October	8	1.2	0	0	28	4.1	188	28.6	45	6.9	143	22.1	31	4.7	9	1.3	68	10.5	122	18.5	642																	
November	6	1.0	0	0	24	3.8	160	26.0	35	5.6	146	24.2	29	4.7	12	1.9	59	9.7	129	19.7	600																	
December	6	1.1	0	0	13	2.2	179	32.4	32	5.6	136	24.9	26	4.8	11	1.9	63	11.6	74	13	540																	
Yearly Total	83	1.2	1	.01	282	4.0	2061	29.1	444	6.3	1499	21.2	468	6.6	141	2.0	709	10.0	1383	19.6	7,017																	

\* One Page of Data is Missing

ADMISSIONS BY OFFENSE

1989

	HOMICIDE						MANSLAUGHTER						RAPE/SEX ASS.						CRIMES AGAINST PERSON						DRUGS: POSSESSION						DRUGS: INTENT TO DISTRIBUTE						CRIMES AGAINST PROPERTY						LARCENY						OTHER						TOTAL ADMISSIONS PER MONTH																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																															
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January	7	1.1	0	0.0	0	0.0	16	2.5	189	30.2	31	4.8	161	25.8	36	5.7	12	1.8	37	5.9	128	20.0	617																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																															

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

[Caption Omitted in Printing]

AFFIDAVIT OF ROBERT C. RUFO

Now comes Robert C. Rufo on oath and  
says:

1. I am Robert c. Rufo, Sheriff of  
Suffolk County. I became Sheriff of  
Suffolk County in January, 1987. As  
Sheriff of Suffolk County I am  
responsible for the administration of the  
Charles Street Jail, the only facility in  
Suffolk County for holding pretrial  
detainees. As Sheriff of Suffolk County  
I will also be responsible for the  
administration of the new Suffolk County  
Jail under construction on Nashua Street.

2. Prior to becoming the Sheriff  
of Suffolk County in January, 1987, I  
was, beginning in 1977, the Special  
Sheriff of Suffolk County. As Special

Sheriff of Suffolk County, I was responsible for the day to day administration of the Charles Street Jail, including operational matters, administration of the budget and personnel matters.

3. As Sheriff and Special Sheriff I have been involved in the planning for a new Suffolk County Jail, and I am familiar with the plans for a new jail, including the original design for a 309 cell jail to be build adjacent to the existing Charles Street Jail, with the expansion of that design to 453 cells and the jail not under construction on Nashua Street.

4. A 2=309 cell jail was designed in accordance with the Architectural Program which is part of the Consent Decree comprising: male housing: 224

cells, female housing: 16 cells,  
disciplinary segregation: 16 cells,  
protective custody: 8 cells, intake: 32  
cells and medical: 13 cells.

5. The number of cells in the original 309 cell design was based on projections of the Suffolk County pretrial detainee population prepared by the accounting firm of Pete, Marwick & Mitchell found at pages 3 and 4 of the Architectural Program.

6. In October, 1984, the Sheriff of Suffolk County was sued by the Attorney General of the Commonwealth when the Sheriff refused to pick up and take into his custody pretrial detainees from courts in Suffolk County. At that time the capacity of the Charles Street Jail was 266 cells with five cells to be held open for use in emergencies only. The

number of pretrial detainees being committed to the Sheriff's custody was consistently exceeding the cap of 266. The Sheriff was, thus, unable to both comply with this cap and hold all the detainees committed to its custody. The Sheriff then brought suit against the Mayor and City Council of Boston, who collectively are the Suffolk County Commissioners, to compel them to fund and construct a new and larger Suffolk County Jail. True copies of various pleading from and orders entered in those two cases are found at Appendix 7, 8, 9, 12, 20, 21, 22 and 23.

7. Chapter 799 of the Acts of 1985 provided funding for the construction of the new Suffolk County Jail. The construction of that jail on Nashua Street commenced on September 1, 1987,



and the jail is scheduled for occupancy in March, 1990.

8. In 1985, the Sheriff because of increases in the number of detainees being committed to his custody, contrary to the projections contained in the Architectural Program, joined with the plaintiffs and moved for a modification of the consent decree to increase the number of cells in a new Suffolk County Jail from 309 to 435.

9. When the site of the new Suffolk County Jail was moved from adjacent to the Charles Street Jail to Nashua Street, the number of cells was increased to 453. The number and type of cells are set forth in the following table:

	<u>Original Design</u>	<u>Suffolk County Jail Now Under Construction</u>
	<u>309</u>	<u>453</u>
Male housing	224	282
Female housing	16	40
Administrative/ Disciplinary Segregation	16	66
Protective Custody	8	8
Intake	32	35
Medical*	13	22

\*Infirmery, psychiatric observation,  
suicide prevention.

—	—
309	453

46.6%  
increase

<u>Type of Cell</u>	<u>Function</u>
Male housing	Hold male inmates.
Female housing	Hold female inmates.

Administrative segregation	Hold inmates who present problems that require that they be kept separate from the general inmate population.
Disciplinary segregation	Hold inmates who have been subject to discipline.
Protective custody	Hold inmates who are in need of additional protection from fellow inmates.
Intake	Hold inmates while they are being classified.
Medical: Infirmary	Hold inmates who are being treated for medical problems that do not require hospitalization.
Psychiatric observation	Hold inmates who exhibit psychiatric problems.
Suicide prevention	Hold inmates who present a risk of suicide requiring additional observation and care.

10. The design of the new Suffolk County Jail at Nashua Street is depicted

by the floor plans which appear at Appendix 15. The regular male housing cells are located in eight modular units, with each unit containing two tiers of 17 to 19 cells per tier, for a total of 34 or 38 cells in each modular unit. On the first level of each modular unit are a day room, including a kitchenette, a "quiet room", two counseling rooms and telephones. On the second level of each modular unit are an exercise room and a noncontact visiting area. The new jail also contains a law library, general library and classroom space. All areas within the new jail are climate controlled.

11. In each modular unit the common area which is open to all inmates when they are out of their cells consists of the day room, quiet room and exercise

room. Double-celling in each modular unit has been limited so that the amount of common area floor space per detainee exceeds the American Correctional Association's standard of 35 square feet.

12. The number of cells available at the Charles Street Jail has increased since the Consent Decree was entered into. From January 1, 1979, to June 30, 1987, there were 266 cells available (plus five for emergencies); from July 1, 1987, to March, 1989, there were 326 cells available (plus five for emergencies); from March 1989, to date, 342 cells are available (plus five for emergencies). Sixty prefabricated cells were opened adjacent to the main jail in July, 1987, under an order entered in the State Case following a motion by the Sheriff to increase the number of cells

at Charles Street. An additional 16 cells were opened in March, 1989. These were old cells which lacked plumbing and electricity and were rehabilitated at the request of the Sheriff.

13. It has been my responsibility both as Special Sheriff and as Sheriff to take the steps necessary to insure that the cap in place at the Charles Street Jail is complied with and that all detainees committed to the custody of the Sheriff are held. This has been done by transferring detainees pursuant to G.L. c. 2756, 52A to correctional facilities of the Commonwealth and by transferring detainees to other county facilities where space is available. This has become increasingly difficult to do as state and county correctional facilities have become increasingly crowded, have

exceeded their capacities and an increasing number of county facilities have been placed under court ordered caps. This problem became a crisis in the spring of 1989, when the number of detainees committed to my custody on a daily basis was well in excess of 400 and approached and then exceeded 500.

14. I have visited the state and county correctional facilities where Suffolk County pretrial detainees are held, and I am familiar with the conditions of confinement at those facilities.

15. At those facilities Suffolk County pretrial detainees are double-celled or held in dormitory settings, often in antiquated facilities, which sometimes lack even a basic medical clinic, and which usually lack

recreational facilities and social programs.

16. The new Suffolk County Jail at Nashua Street will be the most modern correctional facility in the Commonwealth and its conditions of confinement, even with double-celling, will be superior to those of any other facility.

17. The Bail Appeal Project, which provides attorneys and staff to conduct prompt bail reviews of Suffolk County pretrial detainees, has been in place since 1977. Upon motion of the Sheriff the expansion of that project was made by an order entered in the state case on January 9, 1985.

18. A number of "half-way house" spaces have also been utilized by the Sheriff to hold pretrial detainees. These are minimum security facilities and



a study of pretrial detainees committed to these facilities shows that 10% of the detainees have broken the terms of their commitment and have left the facility. These "walk-aways" are persons who were being held on bail, but were transferred to a half-way house rather than being released to the street during an overcrowding crisis at the Charles Street Jail.

19. I propose to double-cell at the Nashua Street Jail in accord with the following plan (the cells that would hold two pretrial detainees are shown on the plans which appear at appendix 15):

1. The special purpose cells
  - administrative/disciplinary segregation - protective custody and medical (infirmary and psychiatric observation and suicide prevention)

would not be used as regular housing cells, but only for the purposes for which they were intended.

2. In the common area - day room, quiet room and exercise room - the American Correctional Association's standard of 35 square feet of space per detainee would be exceeded.

3. The second bed in each cell would be installed "bunk bed" style to maximize usable floor space.

4. All cells in each modular unit of the new jail are under observation either directly or by closed circuit television from the control room. The control room is a glassed-in secure room which provides observation of the cells

and common areas of each modular unit.

5. A minimum of two jail officers would be outside the control room in each modular unit.

6. Double-celled pretrial detainees would be out of their cells for 12 hours per day.

7. No detainee would be double-celled with another detainee, except after having been evaluated by a classification program. Detainees would be classified as to their suitability for being housed with another detainee in accord with the classification program developed by the National Sheriff's Association. A description of this program appears at Appendix 39. The classification team reviewing each

detainee would consist of a physician, nurse, social worker and jail officer.

8. The Bail Appeal Project, providing for automatic Superior Court Bail Reviews of pretrial detainees committed to my custody, would be continued.

9. The Pretrial Control led Release Program would be continued.

10. Double-celling would not occur until all regular male housing cells had been filled.

20. It is my opinion, based upon my twelve years of experience as Special Sheriff and Sheriff and my familiarity with the Suffolk County pretrial detainee population, that double-celling in accordance with this plan would provide conditions of confinement better than

those at any state or other correctional facility where Suffolk County pretrial detainees have been held or may be held.

21. The statements contained in the foregoing affidavit are true and are based upon personal knowledge.

                    /s/                      
Robert C. Rufo  
Sheriff  
Suffolk County

[Jurat Clause And Certificate  
Of Service Omitted in Printing]

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

[Caption Omitted in Printing]

AFFIDAVIT OF ELLIOT PAUL ROTHMAN

I, Elliot Paul Rothman, hereby  
depose and say that:

1. I am an architect licensed to  
practice in the Commonwealth of  
Massachusetts.

2. I have served as plaintiffs'  
architectural consultant in the Inmates  
of the Suffolk County Jail v. Kearney  
case since 1971 and have been appointed  
by the Single Justice of the Supreme  
Judicial Court to serve as plaintiffs'  
architectural monitor since 1986.

3. I have reviewed the Sheriff's  
motion papers to modify the Consent  
Decree to allow for double bunking.

4. My letter and report of  
September 6, 1989 to plaintiffs' counsel

attached hereto accurately sets forth my opinions with respect to the following three questions:

- A. What standards will be violated if 200 inmates are added to the general population cells at the New Suffolk County Jail?
- B. How can residents be monitored within their cells if cells are double bunked?
- C. What was the latest date under which the new Suffolk County Jail could have been redesigned to accommodate additional modules that conform to the standards adopted in the Request for Proposal?

/s/  
Elliot Paul Rothman

[Jurat Clause Omitted in Printing]

[Rothman  
Letterhead]

6 September 1989

Ms. Lynn Weissberg, Esq.  
Stern and Shapiro  
80 Boylston Street, Suite 910  
Boston, MA 02116

Re: Suffolk County Jail: Effect of Added  
Residents  
RRH Project No. 85013.03

Dear Ms. Weissberg:

Three major questions are addressed in order to identify the impact of double bunking on the new Suffolk County Jail, presently under construction. They are as follows:

- A). What standards will be violated if 200 inmates are added to the general population cells at the New Suffolk County Jail?
- B). How can residents be monitored within their cells if cells are double bunked?



C). What was the latest date under which the new Suffolk county Jail could have been redesigned to accommodate additional modules that conform to the standards adopted in the Request for Proposal?

The following text endeavors to answer the these questions. We shall be pleased to discuss our responses at your convenience.

Very truly yours,

/s/

Elliot Paul Rothman, AIA

[85013.03/A1082489]

## SUFFOLK COUNTY JAIL

### ARCHITECTURAL IMPLICATIONS OF DOUBLE BUNKING IN THE NEW SUFFOLK COUNTY JAIL

Three major questions are addressed in order to identify the implications for modification of the new Suffolk County Jail to accommodate additional residents. They are as follows:

1. What standards will be violated if 200 inmates are added to the general population cells at the new Suffolk County Jail?
2. How can residents be monitored within their cells if cells are double bunked?
3. What was the latest date under which the new Suffolk County Jail could have been redesigned to accommodate additional modules that conform to the standards of the RFP?

WHAT STANDARDS WILL BE VIOLATED IF 200 INMATES ARE ADDED TO THE GENERAL POPULATION CELLS AT THE NEW SUFFOLK COUNTY JAIL?

Two major sets of standards are being violated if the cells are double bunked. They include the standards of the American Correctional Association and the standards established by the Massachusetts Division of Capital Planning and Operations in their Request for Proposal for the new Suffolk County Jail. The RFP Proposal adopted the ACA Standards.

The following sections identify violations:

#### General Conclusions

Multi-purposed contact and non-contact visiting space needs to be increased.

We assume that no double bunking is proposed for the 48 hour module, administrative segregation, disciplinary segregation, protective custody, and the medical and psychiatric units. The 200 additional inmates represent an increase of 52% above the normal remaining modules.

Where double celling occurs, the area per resident is reduced from 70 NSF per resident to 35 NSF per resident. The standard is 70 NSF per cell.

Eighteen additional showers need to be installed.

Dayroom space is reduced in proportion to the increased number of residents, below the standard of 35 NSF (net square feet) per resident to 22-26 NSF per resident. The standard is 35 NSF per resident. All dayrooms in modules

with population increases are reduced to sub-standard levels.

Outdoor exercise space on the fourth floor west is reduced to 12.50 sq. ft. per resident compared to the standard of 15 sq. ft. per resident and is reduced to 9.92 sq. ft. per resident on the Sixth Floor.

Additional desk space is required for legal/administrative assistants and for caseworkers that will be required for the additional number of residents with no additional space available.

Nine additional attorney/counselling rooms are required. There is no additional space available.

An additional reading lamp fixture and an additional headphone receptacle

needs to be added to each double bunked cell.

Rated Capacity

The rated capacity is, as we understand, as follows. We require confirmation from the Sheriff as to his determination of rated capacity:

Total number of residents	653
Less Detention	
Disciplinary	16
Administrative	32 *
Less Medical	7
Less Psychiatric	15
Total Rated Capacity	383
Additional Capacity Proposed	
by Sheriff	<u>200</u>
Total Rated Capacity	583

\* All cells are not administrative detention cells. For practical purposes and because of the

increased population we have assumed, in this analysis, that all cells will be administered as a special purpose unit and remain single celled.

#### Standards Applied

Standards applied are from the "Feasibility and Technical Study, Suffolk County Jail Boston (Division of Capital Planning and Operations, Mass. State Project No. CSB 86-1 STU, September 1986) as prepared by Sert, Jackson & Associates Inc., Architects and Planners.

Because the initial program, rather than the current architect's plans formed the basis for application of the standards, we have chosen to revert to the original program in referring to standards for rooms and spaces.

However, you will find, attached, our

calculation of all spaces under construction in accordance with the Hyman-Stubbins design and plans which are under construction. These calculations on the actual rooms and spaces under construction form the basis for our evaluation of compliance with the original standards.

Our conclusions and that of our engineers are as follows:

Room	Staff Locker
Ser. No.	SS-2 (male/SS-3 (female) 169 male staff and 40 female staff are provided for. Will there be space for additional staff to serve additional residents?

Room	Senior Officers' Lockers
Ser. No.	SS-4 40 senior officers are provided for. Will there be space for additional senior staff, if any additional are required, to serve the additional residents.



Room	Assembly/Chapel
Ser. No.	MP-8
	100 inmates are already provided for. The Chapel cannot be enlarged. Shifts will be required for the additional inmates.
Room	Multipurpose/Non-Contact Visiting
Ser. No.	MP-13
	Additional burden on use of this room. More utilization.
Room	Multipurpose/Contact Visiting
Ser. No.	MP-14
	Additional burden on Contact Visiting by 200 added residents; about 52% less space. Additional space can be added by filling in the entry overhang, if structurally feasible.
Room	Multipurpose/Classroom
Ser. No.	2 classrooms.
	There is a need for at least two more classrooms. The entry overhang can be filled in.

Room	Legal/Administrative
Ser. No.	Assistants
	PS-4
	5 spaces are provided; additional staff are required to support the additional inmates and additional desks need to be added. No space is available for the increase.
Room	Caseworker
Ser. No.	PS10
	11 offices are provided for 8 caseworkers, 1 case flow worker, 1 drug abuse worker, and 1 alcohol abuse worker. Additional office space is required to support the additional 200 cases. No space is available for the increase.
Room	Health Services
Ser. No.	HS
	Health service space is probably sufficient, because, in our opinion, there was an excessive number of patient bedrooms and psychiatric bedrooms originally programmed. Scheduling for greater utilization of programmed facilities is required.

Rooms

Single Bedrooms  
Male Housing Unit/Female  
Housing Unit, 48 Hour  
Holding Unit, Protective  
Custody Unit  
Ser. No. MU-2/FU-2/  
HU-2/SU-2/PC-2  
Each room is 70 NSF.  
Male housing for 2 = 35  
NSF/Resident. 2 per cell  
is unacceptable. Female  
housing for 2 = 35 NSF/  
Resident. 2 per cell is  
unacceptable.  
Disciplinary segregation  
must be limited to 1  
resident. Administrative  
Segregation must be  
limited to 1 resident.

Room  
Ser. No.

Showers (see chart, p. 10)  
MU-3/FU-3/HU-3/SU-3/PC-3  
1 shower/8 inmates is the  
standard. 18 additional  
showers are required when  
viewed on a module by  
module count. There is no  
space in which to add  
showers.

Room  
Ser. No.

Dayroom (see chart, p. 11)  
MU-4/FU-4/HU-4/SU-4/PC-4  
The standard is 35 NSF/  
resident. Exclusive of  
circulation space in  
typical modules range from  
23 NSF to 26 NSF.

Room	Outdoor Recreation (see chart, page 12) Male Housing, Female Housing, 48 Hour Holding Unit, Segregation Housing Unit/ Protective Custody Unit
Ser. No.	MU-7/FU-7/HU-7/SU-7/PC-7 15 NSF/inmate per ASC Standards (2-5145); 900 NSF minimum area per Massachusetts Regulations (972.03). Two recreation areas when reviewed on the basis of actual recreation/resident count are deficient, one on the fourth floor and one on the sixth floor.
Room	Attorney/Counseling Rooms (see chart, page 13) Male Housing Unit, Female Housing Unit, 48 Hour Holding Unit Segregation Housing Unit, Protective Custody Unit
Ser. No.	MU-11/FU-11/HU-11/SU-11/PC-11 1 attorney/counseling room is required for each 18 inmates. The addition of 200 inmates requires at least 9 more attorney/counselling rooms. When reviewed on a module by module basis 9 additional attorney counseling rooms are required, although there is no space to add them.

Discussion about the Distribution of the Residents

Because 48 hour holding, the segregation units, and protective custody are restricted to one resident per room, the distribution of the remainder places an undue burden on the remaining modules. For the purpose of this analysis, general population modules are assigned 58 inmates each.

Elevator utilization appears to be calculated for the single cell population at least one additional elevator may be needed. It can be added to the corridor opposite existing elevators by constructing a new shaft on the outside.

Summary of Resident Distribution

Dayroom	Existing Population 2 tiers	Additional Proposed Population 2 tiers	Total
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NW	2016	38	20	58
	4016	36	22	58
	6018	40	18	58
SW	2010	34	24	58
	4010	34	24	58
	6009	34	24	58
NE	2069	38	20	58
	4044	35	0	35 (1)
	6051	32	0	32 (2)
	6057	8	0	8 (3)
SE	2063	34	24	58
	4038	34	24	58
	6040	34	0	34 (4)
C	5037	7	9	7 (5)
	5037	<u>15</u>	<u>0</u>	<u>15</u> (6)
	Total	453	200	653

- (1) 40 Hour Holding
- (2) Disc. Segreg.
- (3) Prot. Custody
- (4) Adm. Segregation (partial)
- (5) Medical
- (6) Psychiatric

Added number of Shower Rooms required:

At 1 shower per eight residents, a maximum of 14 shower stalls need to be added. There appears to be no space to add showers without impacting negatively on other required spaces. Because the

modules are generally the same size, many of the modules will be over crowded.

	Dayroom	Existing Pop. 2 tiers	Existing Shower	Proposed Pop. 2 tiers	Total Add'l Showers
NW	2016	38	5	58	2
	4016	36	5	58	2
	6018	40	5	58	2
SW	2010	34	5	58	2
	4010	34	5	58	2
	6009	34	5	58	2
NE	2069	38	5	58	2
	4044	35	5	0	0(1)
	6051	32	5	0	0(2)
	6057	8	0	0	0(3)
SE	2063	34	5	58	2
	4038	34	5	58	2
	6040	34	5	34	0(4)
C	5037	7	--	7	0(5)
	5057	<u>15</u>	--	<u>15</u>	<u>0(6)</u>
Total	453		65	653	18

- (1) 48 Hr. Holding
- (2) Disc. Segregation
- (3) Protective Custody
- (4) Adm. Segregation (partial)
- (5) Medical
- (6) Psychiatric

Dayroom Deficiencies

In our prior analysis, we identified an average reduction of dayroom of about 6 sq. ft. But when applied to the specific units, the deficiency suggests dramatic overcrowding as follows:

Modules with the following dayrooms are seriously deficient in dayroom space: NW 4016, NW 6081; NE 2069, NE 4044, NE 6051. The standard is 35 sq. ft. per resident.

	Dayroom	Proposed Total	Dayroom Space/ Module	Sq. Ft./ Res.
NW	2016	58	1554.00	26.79
	4016	58	1554.00	26.79
	6018	58	1387.12	23.91
SW	2010	58	1323.00	22.81
	4010	58	1323.00	22.81
	6009	58	1323.00	22.81
NE	2069	58	1554.00	26.79
	4044	35(1)	1387.22	39.63
	6051	32(2)	897.16	28.04
	6057	8(3)	420.40	52.55
SE	2063	58	1323.00	22.81
	4038	58	1323.00	22.81
	6040	34(4)	1323.00	38.91



C	5037	7	319.25	45.21
	5057	<u>15</u>	543.20	36.21
	Total	653		

- (1) 48 Hour Holding
- (2) Disc. Segreg.
- (3) Prot. Custody
- (4) Adm. Segregation (partial)

### Analysis of Outdoor Recreation

Outdoor recreation space no. 6013 is seriously deficient in outdoor recreation space.

Outdoor Space	Proposed Total	Outdoor Space Module	Sq. Ft./ Res.
SW2010/2014/ NW 2016	58 <u>58</u>	1806.40	15.57
Subtotal	116		
SE 2063/2067/ NE2069	58 <u>58</u>	1806.40	15.57
Subtotal	116		
SW4010/4014/ NW4016	58 <u>58</u>	1450.00	12.50
Subtotal	116		
SE4038/4042/ NE4044	58 <u>35</u>	1450.00	15.59
Subtotal	93		

SW6009/6013/	58	1150.40	9.92
NW6018	<u>58</u>		
Subtotal	116		
SE6040/6044/	34(1)	1150.40	15.54
NE6051	32(2)		
NE6057	<u>8(3)</u>		
Subtotal	74		
C 5037	7	319.25	46.00
C 5037	<u>15</u>	543.20	36.00
Subtotal	22		
Total	653		

- (1) Adm. Segreg. (partial)
- (2) Disc. Segreg.
- (3) Prot. Custody

Added number of Attorney Counselling Rooms:

At 1 per eighteen residents, a maximum of 5 attorney counselling rooms room needs to be added. There appears to be no space to add these rooms without impacting negatively on other required spaces. Because the modules are generally the same size, many of the modules will be overcrowded.

Dayroom	Existing Pop. 2 tiers	Existing	Prop. Pop. 2 tier	Total Add'l Atty./ Couns. Rooms Req.
NW	2016	38	2	58 1
	4016	36	2	58 1
	6018	40	2	58 1
SW	2010	34	2	58 1
	4010	34	2	58 1
	6009	34	2	58 1
NE	2069	38	2	58 1
	4044	35	6	35 0(1)
	6051	32	2	32 0(2)
	6057	8	1	8 0(3)
SE	2063	34	2	58 1
	4038	34	2	58 1
	6040	34	2	34 0(4)
C	5037	7	--	7 --(5)
	5057	<u>15</u>	--	<u>15</u> --(6)
Total	453	29	653	9

- (1) 48 Hr. Holding
- (2) Disc. Segregation
- (3) Protective Custody
- (4) Adm. Segregation (partial)
- (5) Medical
- (6) Psychiatric

Impact on Construction Schedule

We have seen no information on the means of constructing the additional beds. However, if properly organized the addition of the bunks themselves need not defer the completion date. However, all bunks and required design modifications would need to have been ordered this summer in order to not affect the occupancy date. Installation once occupancy is completed will be disruptive, time consuming and even costly.

Conclusion

It appears desirable to distribute the additional 200 residents throughout the institution rather than localize them in a few of the housing units, because the distribution reduces the impact of less dayroom space, less contact visiting

space and less space for legal counselling. Outdoor recreation becomes more balanced with a distribution of the added population.

Common service spaces such as central visiting, the library, classrooms and other resources spaces all need to be increased in size.

B). HOW CAN RESIDENTS BE MONITORED  
WITHIN THEIR CELLS IF CELLS ARE  
DOUBLE BUNKED?

B1). Observation Windows in the Doors of  
Each Cell

Sketch SKO-1: Partial NW Module at  
Dayroom 2010, Location of Residents  
Room Plan detail shows a typical  
module selected for illustrative  
purposes.

The cells in the general modules all  
have glazed lights, generally dimensioned

5-3/8" x 33-7/8". The typical door design is shown on Sketch SKO-6, Typical Resident Room Door Types. Officers can observe residents lying on their cots from the glass windows. When the cell door is closed it will be difficult to hear any sounds from the cell which is sound isolated. The glazed viewing windows in each door were intended to assist officers in suicide control and in their count of inmates. They were not intended for general observation, because two people were not to be in the cells. Sketch SKO-6 also illustrates examples of two doors intended for observation in the medical and psychiatric rooms.

The new Suffolk County Jail was designed for single cell occupancy. It was specifically designed to protect the privacy of the inmates. In addition, the

toilet was designed for privacy so that the back of the inmate faces the door and the front faces the head of the bed when he/she is sitting on the toilet.

Sketch SKO-5: Residents Visibility at Typical Type "B" Resident's Room

illustrates what can be viewed vertically by an officer located outside the cell if two bunks are installed.

Sketch SKO-5: illustrates how much of the cell can be viewed horizontally by an officer located outside the cell if two bunks are installed.

When two people occupy a cell the design parameters change significantly. More window area at the door is required in order to assure observability by the officer. In addition, the toilet should have a barrier between it and the bunk beds, so that the user can not be

observed easily by the second inmate.

Sketch SKO-4: Section B illustrates the vertical viewing limits of officers from the central control station into each cell.

Sketch SKO-2: Resident Visibility from Housing Control (Level 2) and Sketch SKO-3: Resident Visibility from Housing Control (Level 3) illustrates the horizontal viewing limits of officers from the central control station into each cell.

From a practical point of view the officers from the viewing station need binoculars or telescopes to observe through the narrow window slots.

A second bunk should be installed in one typical residents room to test observability. Unfortunately, the Architects and Contractor have failed to



provide mockups of the full residents room when requested in the past, and we need assurances that such a mockup will be completed in a timely fashion.

B2). Video Camera

There are six closed circuit TV cameras proposed for the Quiet Rooms of modules, in Rooms 2005, 2058, 4005, 4033, 6004, and 6035.

There is no provision for closed circuit TV cameras in the cells. If needed to monitor activities within the cells (privacy of the inmate issues, notwithstanding), CCTV's could be located above the lavatories in such a manner and with an appropriate lens to observe both bunks. Wiring could be installed in conduit within the ductshaft.

C). WHAT WAS THE LATEST DATE UNDER WHICH THE NEW SUFFOLK COUNTY JAIL COULD HAVE BEEN REDESIGNED TO ACCOMMODATE ADDITIONAL MODULES THAT CONFORM TO THE STANDARDS ADOPTED IN THE REQUEST FOR PROPOSAL?

The new Suffolk County Jail was constructed in two phases. First the pilings that support the structure were installed. Then the structure above the pile caps was erected upon formal authorization by DCPO to proceed.

The organization of construction using piles permitting DCPO to authorize discreet construction phases of work.

If the Sheriff of Suffolk County determined that additional inmates should be added, it would have been

possible to add additional modules. Each of the modules met standards agreed upon by the DCPO and counsel under the Request for Proposal documentation.

The latest dates that the Sheriff could have reasonably made the determination to add additional modules were generally between the last week in March and the third week in April 1988. A fixed date would have been 20 April 1988 a day before steel erection commenced.

Then the piles and pile caps were being completed, all shear walls had not yet been poured, and the foundation walls that had been poured were exposed, all before steel was to be erected above the foundations. These activities were

occurring at different times across the site. It is important to note that steel shop drawings were being approved, but steel had not yet been shipped so that modifications, if required, could have been made in the fabrication mill.

In addition, if additional foundation support were required as a result of the vertical addition of modules, they could have been added and pile caps could have been modified for additional design loads before steel was shipped to the site.

Following are rates describing construction activity called from Hyman-Stubbins construction meeting notes.

Driving of production piles  
commenced on 11/24/87 (see HSI,  
Hyman-Stubbins Inc.

Construction Progress Meeting  
No. 7 notes, dated November 25,  
1987).

Alison Nichols, Project Manager  
for HSI, reported that as of 23  
March 1989 the 'majority of the  
wall had been poured along 1  
line and the majority of the  
'interior' building pile caps  
had been poured. A mid April  
start for erection of  
structural steel was schedule  
(see HSI, Construction Progress  
Meeting No. 24 notes, dated  
March 23, 1987.

DCPO issued a letter on May 4, 1988 in which DCPO still had yet to obtain a complete set of approved plans and specifications from Hyman-Stubbins. DCPO announced agreement to issue the 'Notice to Proceed' with Phase II funds on Friday May 13, Phase I funds having been allocated up completion of foundations work. (see DCPO letter of 4 May 1989 from John Messervey, Project Manager).

Central shear walls were poured on April 8, 1988 ... steel to start approximately April 19, 1988 (see HSI Construction Progress Meeting No. 27 notes, dated April 13, 1988).

Construction of foundation walls progressed. Structural steel erection commenced on April 21, 1988 (see HSI Construction Progress Meeting No. 29 notes, dated April 27, 1988).

[85013.03/A1082489]

[DIAGRAMS: See Joint Appendix at pp.260-265]

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

[Caption Omitted in Printing]

AFFIDAVIT OF JOHN BUCKLEY

I, John Buckley, hereby depose and say that:

1. From April of 1970 to January of 1981 I was the Sheriff of Middlesex County. As Sheriff, I oversaw both the Jail and the House of Correction at Billerica, Massachusetts. The population of the Jail ranged from 75 to 125 and the population of the House of Correction, from 200 to 300.

2. I have also served as an expert witness or consultant in numerous jail and prison cases, including many conditions law suits. I have been a consultant on cases involving correctional condition suits in Hampden,



Worcester and Norfolk county Jail and House of Corrections in the Commonwealth.

3. I have been involved with the Charles Street Jail for 22 years. I first became involved as the Executive Director of the New England Citizens Crime Commission in 1967. Later I was involved as the Executive Director of the Massachusetts Council of Crime and Correction, which was part of the National Council on Crime and Delinquency, which did a study of the jail in 1968-69. Later, as a friend of the court, I assisted Judge Garrity in the search for alternative locations for the jail. Finally, I have been involved as an expert witness for the plaintiffs in Inmates of the Suffolk County Jail v. Kearney, C.A. No. 71-162-K, and have consulted with plaintiffs' architectural

expert Elliot Rothman with respect to the design of the new facility.

4. My resume is attached hereto and sets forth other experience I have in the area of corrections.

5. I have reviewed the motion of the Sheriff of Suffolk County to modify the consent decree and the supporting documents. I viewed the new Suffolk County Jail on June 27, 1989.

6. The architectural program for the new Jail is based on the standards of the American Correctional Association (ACA): Standards for Adult Local Detention Facilities, Second Edition, April 1981, Sec. 2-5110. Both the architectural program, which is incorporated in the Consent Decree, and the ACA Standards require single cell occupancy for pre-trial detainees.

7. The cells in the new Jail are designed for single cell occupancy and give maximum privacy to each detainee. Unlike the barred cells of the old Jail, through which every movement could be observed, the doors in the new facility are solid with only a small sealed window which measures 5 3/8" x 33 7/8". The wash bowl and toilet are arranged at an angle facing away from the door for greater privacy. Each cell has an outside window which is also sealed and cannot be opened. These aspects of the design of the cells that allow the detainee greater privacy would not only be lost in a double celling arrangement, but would, in fact, create a more dangerous situation for the detainees.

8. Because each cell is hermetically sealed, inmates locked in

effectively cannot communicate with the officer who is likely to be at the control station. If there is a fight or any kind of problem, the inmate would have to signal from within by kicking the door, pounding the enclosed window in the door, or waving at the closed window. Yelling would probably not be heard. Thus, the safety of any double-celled inmate could not be insured. If an officer is to be aware of any problem, he would have to be very close to the cell door rather than being able to view it from the control station. Safety of the inmates would require continuous viewing by an officer actually looking in the windows of the doors during the hours that detainees are locked in their cells.

9. The cells in the old Jail have 80 square feet of space. The cells in

the new facility contain only 69.59 square feet in their entirety. When one subtracts from the floor space the area taken by one bed, shelf, toilet, and sink, the actual amount of floor space - or moving around space - is 39.46 square feet. As Judge Garrity said of the cells in the old Jail in 1973, "It is impossible for two men to occupy one of these cells without regular, inadvertent physical contact, inevitably exacerbating tensions and creating interpersonal friction." The cells in the new Jail are even smaller.

10. I spent some time in one of the cells in the new Jail. At first I was alone and was in the cell for almost 60 minutes. Given that it is a sealed room, I felt that it would be difficult to get the officer's attention if I needed to

communicate with him while I was locked in the cell. Although the Sheriff states that there would be considerable out of cell time, detainees, according to the Sheriff, would be locked in their cells for 12 hours per day. Later, I spent 45 minutes in a cell with plaintiffs' architect Elliot Rothman. After about 45 minutes in such a small space, I felt the "closeness" of the quarters and that we were intruding on each other's space.

11. The only description of the classification program the Sheriff intends to use is found at tab #39 of the Appendix. It is an article, "Jail Classification and Discipline," published by the National Sheriff's Association.<sup>1</sup>

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<sup>1</sup> However, on the title page the Sheriff's Association states that the article does "not necessarily represent the official position or policies" of the National Sheriffs' Association.

In the most general terms, the author, Marilyn B. Ayres, describes classification procedures. She offers little, if anything, in the way of concrete proposals or procedures. For example, it says that violent detainees should be identified because of the risk they pose to others. Id. at 34.

However, she does not say how such dangerousness can be detected. She also recommends that the officers be "highly skilled in problem identification ... and be able to determine passiveness and vulnerability as well as aggressiveness and belligerence." Id. at 35. Again, she does not indicate how the officers should be trained to achieve this goal.

12. Under the Sheriff's proposal, 400 men would be double bunked. I do not believe that any classification system

would be effective in preventing the very real possibility of assaultive or sexually abusive behavior between two men double bunked in one of these cells. It is my opinion that double bunking 200 of the cells at the new Suffolk County Jail, despite the attempts at classification, will lead to a substantial likelihood of violent behavior. Pre-trial detainees are the most difficult individuals to keep in custody. They experience much greater tension than sentenced inmates. These tensions are a result of their unexpected arrest and incarceration, their inability to communicate with their family and friends, and their not knowing how long they will be held in custody, whether they can raise the money for bail, when they will be tried, what is happening to their families and their



possessions or what the outcome of their trial will be. Frequently, there is very little in the way of background information available to the Sheriff with respect to the detainees. In addition, there is much greater turn over with pre-trial detainees which means that it is harder to assess a constantly changing population. At the Charles Street Jail according to the Sheriff's figures, fifty percent of the detainees are released within eight days. Each of these factors makes meaningful classification extremely difficult.

13. I believe that the combination of isolation, inability to communicate, and tension caused by having two inmates in a cell designed for one will produce serious problems for the safety of the inmates and ultimately for the

Correctional officers and Sheriff's staff.

14. A new jail, like a newly launched ship, needs a breaking-in period of six to twelve months. Officers need to familiarize themselves with the new facility, noise levels have to be determined, use of restricted areas, visitors, kitchen use, problems with automatic doors, elevators, stairwells, plumbing cabinets, and air and heat flow all need to be worked out. To open this or any other facility with more inmates that its design capacity would be irresponsible. The results could be tragic for officers and inmates alike.

/s/  
John Buckley

[Jurat Clause Omitted in Printing]

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

[Caption Omitted in Printing]

SUPPLEMENTAL AFFIDAVIT OF  
ROBERT C. RUFO  
SHERIFF OF SUFFOLK COUNTY

Now comes Robert C. Rufo on oath and  
says:

1. I am Robert C. Rufo the Sheriff  
of Suffolk County.

2. This affidavit supplements my  
previously filed affidavit in support of  
my motion to modify the consent decree  
entered in this case.

3. I have toured the new Suffolk  
County Jail at Nashua Street on over  
fifty (50) occasions, including all the  
housing units. The housing units are  
complete, except in some units for  
installation of flooring material outside  
of the cells (cells will have concrete  
floors), appliances in the kitchenette

and laundry area and the officers' station (a counter and desk behind which an officer sits).

4. After careful consideration of the double-bunking plan described in my previously filed affidavit and the number of inmates committed to my custody who are subject to administrative or disciplinary discipline, I have concluded that the thirty four (34) cells in the administrative segregation area should be used for regular male housing. Inmates subject to administrative segregation would be housed in the same thirty two (32) cell unit previously designated for disciplinary segregation.

5. This change will increase the number of regular male holding cells to 316, reduce the number of double-bunked

cells to 197 and leave 119 regular male holding cells for single occupancy.

6. The regular male housing units would be utilized as follows:

<u>Unit</u>	<u>Number of Cells</u>	<u>Number of inmates if double-bunked</u>	<u>Number of Double bunked Cells</u>	<u>Square* feet in common area** accessible to inmates</u>	<u>Square feet per inmate in common area</u>
2 South	34	53	19	2040	38.49
2 West	38	70	30	2703	38.61
2 North	38	70	30	2703	38.61
2 East	34	53	19	2040	38.49
4 West	36	65	19	2486	38.25
4 South	34	53	19	2040	38.49
4 East	34	53	19	2040	38.49
4 North	34	53	19	2040	38.49
6 East	<u>34</u>	<u>53</u>	<u>19</u>	2040	38.49
	316	513	197		

\* See separately filed Affidavit of David Tenney for calculations of these square footages.

\*\* The common area square footage includes the day room, multipurpose ("quiet") room, exercise room.

7. The above plan would exceed the thirty five (35) square feet of day room space per inmate recommended by ACA standard for Adult Local Detention Facilities 2-5144.

8. The special needs cells, except for the changes stated, will continue to be used for their special purposes:

Protective custody	8
Classification	35
Medical	22
Administrative/ Disciplinary Segregation	32

9. In addition there is a forty (40) cell housing unit for female inmates.

10. All inmates in the regular housing units would be allowed out of their cells, except for an eight hour sleep period and four one hour periods dispersed throughout the day for inmate counts, security checks, staff relief and shift changes.

11. No inmate would be double-bunked except in accord with the Suffolk County Sheriff's Department Classification Program. (See below.)

12. During the day and evening shifts two jail officers would be assigned to each housing unit. During the night shift, midnight to eight a.m., one jail officer would be assigned to each housing unit. During all shifts, a supervisor will be in the control room and will have two housing units under his observation and control. During all

shifts an Emergency Response Team ("ERT") will be available. Members of the ERT will respond in pairs to any emergency in a housing unit.

13. During any time when inmates are locked in their cells, each double-bunked cell will be checked at irregular intervals.

14. The Bail Appeal Project, providing for automatic Superior Court bail reviews of pretrial detainees committed to the Sheriff's custody, will be continued as part of the comprehensive Program Services Legal and Social Services Division.

15. The Pretrial Controlled Release Program would also continue. (See separately filed Affidavit of Paul McGill.)



16. Attached hereto and incorporated herein as Exhibit A is the fire safety and evacuation for plan inmate housing units at the Nashua Street Jail. This plan will be subject to further refinement as the transition to the new jail is completed.

17. Before being implemented at the Nashua Street Jail, the fire safety and evacuation plans will be reviewed and approved by both the Boston Fire Department and former Fire Commissioner of the City of Boston, George Paul, who has been retained by the Sheriff's Department. Thereafter the plan will be subject to annual review and approval by the Boston Fire Department.

18. In all cells each inmate will be provided with a fire resistant steel locker to hold his or her belongings.

The steel lockers will be designed to be stored beneath the lower bunk. Inmates will be required to keep all their personal belongings in their lockers.

19. Each inmate would also be allowed the use of a radio with earphones in the cell.

20. Noncombustible ashtrays and refuse containers will be used in each housing unit.

21. Each housing unit will be inspected daily by jail officers assigned to the unit to insure that inmates are storing their personal belongings in their steel lockers, the refuse container has been emptied, and no combustible material has accumulated in the unit.

22. The Nashua Street Jail will also be subject to an annual inspection by the Boston Fire Department.

23. I have appointed Officer James Coppi of my Department as the fire safety officer for the Nashua Street Jail. Officer Coppi has eight years experience and training as a firefighter in the United States Air Force. Officer Coppi has also attended the firefighting school conducted by the Boston Fire Department for Suffolk County Jail personnel. Officer Coppi will conduct weekly inspections of each housing unit to assure compliance with fire safety standards.

24. In each double-bunked cell there will be two flame retardant mattresses, as approved by the Boston Fire Department, two pillows, two blankets, two sheets, two wash cloths, two hand towels.

25. In each housing unit there will be two fire extinguishers and a fire hose connected to a standpipe.

26. The Control Room, which serves two housing units on each level, has electronic control over all housing unit cell doors, including simultaneous emergency release of all the cell doors. Each Control Room will also hold two "Scott Air Packs" - self-contained breathing apparatus - for use by Jail staff.

27. Each jail officer on a housing unit will have a key to open all cell doors in that unit. A spare key for the cells in each unit will be in the Control Room for that unit and in the Central Control Room. The Central Control room is located on the first floor of the building and contains the fire

annunciator board and has control over the building's elevators and emergency stairways.

28. Inmates wear Jail issued outer clothing. Their personal clothing is kept in the Jail property room and is available for inmate court appearances. Inmates are allowed to keep some underwear and a pair of shoes or sneakers in their cells.

29. When out of their cells inmates will have access to the dayroom, separate multipurpose ("quiet") room and exercise areas. Inmates will have access on a scheduled basis, weather permitting, to the outdoor recreation deck. Each recreation deck services two housing units, and the inmates from one unit at a time will have access to the recreation deck.

30. Inmates will be allowed access to the showers on the housing unit except during lock down time.

31. During those times when inmates are confined to their cells, it will be standard procedure to have the day room television turned off and the intercom in the Housing Unit Control Room turned on. This will allow the officer in the Housing Unit Control Room to monitor the unit and its cells.

32. I have personally inspected dozens of cells at the Nashua Street Jail, including looking from the outside into the cell through the window in the cell door. By simply turning one's head it is possible to view all of the cell's interior.

33. When checking a cell during lock down time a jail officer is required

to confirm the presence of each inmate in the cell. Each cell has a night light turned on and off by the jail officer from outside the cell for this purpose.

34. A copy of the classification program for the Nashua Street Jail is attached hereto and incorporated herein as Exhibit B.

35. By state statute, no juveniles are held by the Suffolk County Sheriff's Department.

36. One of the goals of the classification program is to determine if an inmate is suitable for double-bunking.

37. Under the classification program, inmates are evaluated based upon information gathered from: present court records, probation records, Suffolk County Jail records, the booking questionnaire, medical records,

observations of the booking officer, observations of jail officers, interviews with case workers, nurse's interview and physical examination.

38. My department is in the process of completing development with Honeywell/Bull of a computerized inmate tracking system (which will indicate an inmate's housing assignment and present location at any given time, e.g. court, social services, infirmary, etc.). There will also be an inmate database containing information on: prior Suffolk County Jail admissions, prior charges, known aliases, disciplinary record social services record and medical history. This computer system will be used in the classification process to store and exchange information. As this system is completed and implemented at the Nashua



Street Jail, the classification program will be subject to further refinement.

39. Inmates who, based upon available information, meet any of the following criteria will not be suitable for double-bunking: a prior history of violent or assaultive behavior against other inmates, past or present charges of rape or sexual assault, any indication of mental illness, under the influence of our undergoing withdrawal from drugs, and medical illness or problems that may result in increased tension between cell mates.

40. Further, the shift commander on any shift will have the authority to remove an inmate from double-bunking, if in his judgment there may be a threat to inmate or staff safety. Also, all Jail personnel are required to report to the

Classification Director any incident or information which may affect an inmate's classification status, including his suitability for double-bunking.

41. Inmates will not be moved to the Nashua Street Jail until the building has been thoroughly tested and "shakedown", and I am satisfied that all systems affecting inmate and staff safety and the security of the facility are functioning properly.

42. Inmates will not be double-bunked at the Nashua Street Jail until the Jail staff are thoroughly familiar with all of the facility's systems and have had thirty (30) days experience operating the housing units with one inmate per cell and the Suffolk County Jail classification program has been implemented.

43. I was directly involved in drafting the legislation, Chapter 799 of the Acts of 1985. That act authorized the construction of a new Suffolk County Jail at Nashua Street at a cost of Fifty Four Million Dollars. The contract for the facility was awarded in September, 1986, and ground for this new facility was broken in September, 1987. By order of the Supreme Judicial Court the facility was to be completed by March 1, 1990.

44. I was the Executive Director of the Massachusetts Sheriffs Association ("MSA") for four years and its President since January, 1987. I have participated in the MSA's effort to obtain funds for county corrections. During the period from 1986 to 1990, in addition to the construction of new facilities for the

Commonwealth's Department of Correction, the Commonwealth has also undertaken the financing of new jails and houses of correction for the Suffolk County House of Correction, and jails and houses of correction for Bristol, Norfolk and Essex Counties.

45. Contrary to the assertion of the plaintiff/inmates, it would have been impossible to change the design of the Nashua Street Jail once the legislation had passed on January 10, 1986. This would have resulted in a further delay in opening a new jail (a delay which, no doubt, the plaintiff/inmates would have opposed) and would have required additional funds from the Commonwealth at a time when hundreds of millions were already being spent for state and county correctional facilities. In these

circumstances, given a choice between the certainty of a new facility and further delay and additional expense to the public, as a responsible public official, I chose the new facility, which will be the most modern in the state, one of the most modern in the country and will meet all constitutional standards.

46. On numerous occasions, beginning in June, 1987, I have written to and met with the Secretary of the Executive Office of Human Services of the Commonwealth, which controls funding for correctional facilities, advising the Secretary of the need for additional jail cells in Suffolk County and proposing the creation of a regional "lock-up" for Suffolk County. A regional lock-up facility would replace police lock-ups in the County and hold prearraingment and

pretrial detainees. Because of continuing budget constraints, funding for such a facility has not been forthcoming.

47. I have visited and toured all of the jails in Massachusetts and the correctional institutions of the Commonwealth where Suffolk County pretrial detainees have been and are being held.

48. In all of these institutions Suffolk County inmates are held in facilities which are substantially inferior to the Nashua Street Jail in terms of the quality of the conditions in which inmates are held and the range of services offered to them - social, medical, educational.

49. All Suffolk County inmates held outside of the County are held in double-bunked cells, some as small as forty-eight (48) square feet.

50. Also, inmates held outside of Suffolk County are further away from their attorney, family and friends.

51. Without the option of double-bunking a portion of the Nashua Street Jail, as Sheriff of Suffolk County I would be left with only two choices: to continue to send Suffolk County inmates to inferior county and state facilities or to prematurely release inmates who are being held on bail to the streets.

52. Persons committed to my custody are typically charged with serious felonies. For example (see Tab 42 of the previously filed affidavits and documents) in 1988 29.1% of the

commitments were for crimes against the person and 21.2% for possession of drugs with intent to distribute.

53. Persons committed to my custody also have the benefit of the Bail Appeal Project which provides for bail review in the Superior Court by attorneys from the Legal Division of the Suffolk County Sheriff's Department. This insures that all inmates, either through their own counsel or the Bail Appeal Project, will have had their bail reviewed by two judges, the judge of the District Court, who initially set bail, and the Superior Court judge who reviewed it.

54. All inmates also have the benefit of the Suffolk County Pretrial Controlled Release Program. (See separately file Affidavit of Paul McGill.) Under this program inmates who



have had bail set in the District Court are recommended to be transferred to a halfway house or released on recognizance to the Boston Employment Resource Center or the Boston Day Reporting Center.

55. Given the existence of the Bail Appeal Project and the Pretrial Controlled Release Program, the only inmates who would be available for transfer to a facility outside of Suffolk County or for release to the street are inmates who have at least twice had their bails reviewed and who have been found unsuitable for inclusion in the Pretrial Controlled Release Program by an Associate Justice of the Superior Court.

56. It is my opinion that such inmates, if released to the street, would pose an unreasonable and significant

threat to public safety and a significant risk of their not appearing at trial.

57. The alternative to double-bunking is to have such inmates transferred to facilities outside of the County, where they would be held in double-bunked conditions that are inferior to those at the Nashua Street Jail. Also, county and state correctional facilities continue to operate at an increasing percentage of their capacities.

58. In fiscal year 1989 approximately \$799,989.00 was expended to transport Suffolk County inmates to other state and county facilities and in fiscal year 1990 expenditures to date have been approximately \$972,029.00. These funds would be significantly reduced, if

double-bunking were permitted at the Nashua Street Jail.

59. At present the four elevators at the Nashua Street jail have been assigned as follows: one for visitors, one for service, one for staff and one for inmates. The impact, if any, of double-bunking at the Nashua Street Jail on the buildings's elevators will be accommodated by scheduling their use and utilizing the staff elevator for inmate movement.

60. The impact, if any, of double-bunking at the Nashua Street jail on the buildings's laundry and kitchen will be accommodated by extending the hours of their operations.

61. I have read the foregoing affidavit and the statements contained

therein are true and are based upon  
personal knowledge.

/s/

[Jurat Clause Omitted in Printing]

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

[Caption Omitted in Printing]

SHERIFF OF SUFFOLK COUNTY'S  
PROPOSED ORDER

Now comes the Sheriff of Suffolk  
County and respectfully submits the  
attached proposed order.

Respectfully submitted  
SHERIFF OF SUFFOLK COUNTY  
By his attorney,

/s/  
Chester A. Janiak  
BURNS & LEVINSON  
50 Milk Street  
Boston, MA 02109  
(617) 451-3300

[Certificate of Service  
omitted in printing]

Date: January 8, 1990

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

[Caption Omitted in Printing]

ORDER

The Sheriff's Motion for  
Modification of Consent Decree having  
come on for hearing and having been heard  
it is ordered and adjudged:

1. The Consent Decree is modified  
as set forth in this Order.

2. The number of cells set forth  
below in the following housing units may  
be double-bunked:

<u>Unit</u>	<u>Number of cells</u>	<u>Number of double double-bunked cells</u>
2 South	34	19
2 West	38	30
2 North	38	30
2 East	34	19
4 West	36	19
4 South	34	19

4 East	34	19
4 North	34	19
6 East	<u>34</u>	<u>19</u>
	316	197

3. Double-bunking will occur only when the Sheriff concludes that he cannot hold all the inmates committed to his custody and maintain single-occupancy at the Nashua Street Jail.

4. Double-bunked inmates will be permitted out of their cells, except for an eight hour sleep period and for four one hour periods during the day when inmate counts, security checks and shift changes are occurring.

5. Inmates will be selected for double-bunking in accord with the classification program filed with the Court.

6. Housing units that are double-bunked will have two officers assigned to the unit on the day and evening shifts and one officer on the midnight to eight shift. The Housing Unit Control Room will be manned at all times.

7. "Special needs" cells, classification, infirmary, protective custody, administrative/disciplinary segregation, will be used only for their designated purposes.

\_\_\_\_\_  
Date

\_\_\_\_\_  
District Judge



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

[Caption Omitted in Printing]

AFFIDAVIT OF JAMES E. MURPHY

I, James E. Murphy, hereby depose  
and say that:

1. I, James E. Murphy, during over twenty years with the Federal Bureau of Prisons, worked as a correctional officer, classification officer, associate warden and warden in four facilities ranging in size from 300 beds to 1,000 beds and while on the staff of the central office of the Bureau of Prisons, visited and inspected nearly all federal facilities. During six years with the U.S. Marshals Service, I developed and assisted in the monitoring of the program by which the Marshals Service contract with some 750 local

jails in the United States for confinement of federal prisoners.

2. My resume is attached hereto and includes a complete description of my experience.

3. I have reviewed the following in connection with this case:

- a. The Consent Decree of May 7, 1979;
- b. Max Stern's May 23, 1989 letter to the Sheriff's lawyer, Chester Janiak;
- c. The Sheriff's motion to modify the Consent Decree to be allowed to double bunk in 200 cells in the new jail;
- d. The Sheriff's memorandum of law in support of his motion;

- e. The Appendix of Affidavits of the Sheriff in support of his motion;
- f. Plaintiff's memorandum in opposition to the Sheriff's motion and plaintiffs' appendix in support of their opposition; and
- g. Additional affidavits filed by the Sheriff in January, 1990, including the Affidavit of Sigmund Fine.

4. Sigmund Fine writes at length in support of the Sheriff's request for double bunking in the new jail. Mr. Fine points to his experience as Assistant Warden at the Maryland State Penitentiary in Baltimore where 650 of 750 cells were double bunked. He states that he recalls no instances of murder of or by cell

mates or any greater violence between cell mates than among those who were not cell mates.

5. Mr. Fine neglects to mention, however, that the Maryland Penitentiary houses only sentenced prisoners and historically housed the longest term inmates in the Maryland Division of Correction. Therefore, Mr. Fine and his staff had weeks, months and even years to assess a prisoner's suitability for a double cell. At best, the Sheriff of Suffolk County will have only a few days.

6. Mr. Fine's experience -- at least in Maryland -- is not relevant to that of the Suffolk County Jail, where, according to statistics of the Suffolk County Sheriff's Department, there is a 75% turnover in inmates every two weeks.

7. In the operation of any jail, decisions are made by jail staff about jail inmates. The decision making processes may be extremely formal or may be informal and subjective. To provide a uniform basis of making program decisions concerning prisoners, classification systems for sentenced prisoners were developed many years ago. However, jail classification systems for pre-trial detainees in jails are of a much more recent origin.

8. Classification systems can usually be grouped into two basic categories: subjective and objective. The early classification systems and many currently used in jails are subjective; that is, they require assessments and clinical judgments by the person or persons making the classification

decision. In a subjective system, decision making is governed principally by broadly defined criteria relating to the jail's philosophy, the jail's physical design and the characteristics of the inmates. In order for a subjective classification system to work, the staff must be experienced and must know the inmates well. Otherwise, decisions on classification will not be reliable or consistent.

9. Objective systems, on the other hand, involve a more formalized approach to classification, emphasizing explicitness in decision making. In these systems the staff uses a standardized form such as a check list or scoring sheet to assess inmate custody and/or program needs. Completion of the form results in a recommendation

pertaining to custody designation and programming. The role of staff expertise and judgment is confined to agreement or disagreement with the recommendation. The two essential features of an objective classification system are reliability and validity. Validity means that the items being measured have some reasonable expectation of predicting a certain outcome. Reliability is the degree of consistency in classification. The methods and procedures used to classify inmates must be explicitly stated and consistently used in the classification of all inmates. Objective classification systems purposely limit discretionary decision making to insure uniformity in operations.

10. I have reviewed the Suffolk County Sheriff's Department Policy S-420,

which is the classification plan. (Tab B to Supplemental Affidavit of Robert C. Rufo, Sheriff of Suffolk County). It is my opinion that the system is a subjective one. It is very loosely written and has some significant deficiencies.

11. No time frame is set or even estimated during which the classification decision will be made. Only 35 cells are available in the intake unit so there are severe space constraints on the classification system which do not appear to have been recognized or taken into account in the plan.

12. There is no indication of the relationship between the classification categories (security, medical and social) and the classification levels (general, administrative segregation, escape risk,



disciplinary segregation, suicidal evaluation and medical). See p. 2-3 of the Plan. Similarly, there is no explanation how the scores referred to in the classification categories are calculated or the method for using the standards (at para. .07) in "calculating the final subjective and objective score." (para. 03, at p. 2, definition of "classification categories.")

13. There is also no mention of the number of staff people who will be involved in the classification process or the training that these staff people will receive. In addition, it is unclear whether the information needed by the staff to make decisions will, in fact, be available. It is my opinion that in a large jail such as Suffolk County's it is unlikely that staff will be familiar

enough with the inmates to provide a complete picture of the inmates' history. Without this, accurate subjective classification is not possible.

14. The role of the Special Classification Board in the Sheriff's plan is unclear and largely unspecified. The plan provides that the Board may be convened from time to time to review difficult or unusual cases or to resolve classification disputes. Changing membership on this Board, however, will make consistent decision making unlikely. This Board is supposed to establish sub-groupings within each classification level (p.6). But, there is no indication of the purpose or mandate of these subgroups.

15. I have more than 20 years as a correctional officer, classification

officer, associate warden and warden with single cells, double cells, eight-man cells, ten-man cells and dormitories housing as many as 100 inmates. I have had extensive experience with a variety of classification systems. It is my opinion that the classification system proposed by the Sheriff will not produce reliable and consistent results and will not achieve part of its purpose which is "ensur[ing] inmate safety." (See definition of "classification" as para. .03, p. 1). It is also my opinion that double bunking pretrial detainees at the new Suffolk County Jail as is proposed by the Sheriff would result in a greater likelihood of inmate-on-inmate violence.

          /s/            
James E. Murphy

[Jurat Clause Omitted in Printing]

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

[Caption Omitted in Printing]

SECOND AFFIDAVIT OF  
ELLIOT PAUL ROTHMAN

I, Elliot Paul Rothman, hereby  
depose and say that:

1. I have reviewed the additional  
affidavits filed by the Sheriff in  
support of his motion to modify the  
Consent Decree to allow for double  
bunking.

2. My letter and report of  
February 21, 1990 to plaintiffs' counsel  
which are attached hereto accurately set  
forth my opinions.

/S/  
Elliot Paul Rothman, AIA

[Jurat Clause Omitted in Printing]

[Rothman, Rothman  
& Heineman  
Architects, Inc.  
Letterhead]

21 February 1990

Ms. Lynn Weissberg, Esq.  
Stern and Shapiro  
80 Boylston Street, Suite 910  
Boston, MA 02116

Re: Suffolk County Jail: Affidavit of  
Sigmund L. Fine 1/5/90  
RRH Project No. 85013.03

Dear Ms. Weissberg:

I have reviewed the "Affidavit of Sigmund  
L. Fine", dated 5 January 1990 and have  
attached our detailed response. Three  
major issues are raised by Mr. Fine's  
response.

- 1). The single most important  
architectural contribution of the  
American Correctional Association  
Standards, not already covered by  
the Massachusetts State Building  
Codes and health codes, is that of

cell size. Mr. Fine has inspected many facilities for compliance with American Correctional Association standards. Yet in his affidavit, he is willing to abandon the major criterion used for physical planning, the ratio of net square footage of cell area to individual inmate and reduce the standard from 70 net square feet per inmate, 10 square feet less than the cell size in the existing Charles Street Jail, to 35 net square feet per inmate.

- 2). Mr. Fine's affidavit is limited to addressing ACA standards. The final architectural program and Request for Proposal was not limited to ACA standards, although we find them valuable.

3). On Wednesday 31 January 1990, Sheriff John J. Buckley and I toured the Charles Street Jail in order to further observe actual sight lines from the central officers' station into the cells. Our conclusion is that an officer cannot observe directly into most cells when the cell doors are open; when closed there is almost no possibility of observation from the Central Control Station because of the privacy windows designed to enforce the privacy of one resident per room.

We shall be pleased to respond to any questions you may have.

Very truly yours,

/s/

Elliot P. Rothman, AIA

[85013.03/A1021990]

## SUFFOLK COUNTY JAIL

### Modular Cell Alternative to Double Bunking

Alternatives to double bunking are available on the Suffolk County Jail site. RRH adapted the modular housing units to the southern parking area that is located between the security fence and the concrete wall. This area is allocated to parking space and does not impact on access of service vehicles or inmate transfer to and from the Jail. A new door will be required at the fence into the secure vehicle loading area.

Four floor plans were explored to illustrate the ability of the Suffolk County Jail site to accommodate additional inmate rooms. The floor plans were adapted from the modular housing unit plans for units presently at the Charles Street Jail. (See "City of



Boston, Furnishing and Installing Modular Jail Cells Charles Street Jail Boston, Project No. 2403", Raymond L. Flynn, Mayor, Public Facilities Department, Design-Build Contractor Modular Correctional Systems Inc. 7/11/86, PP. A2, A4 and related drawings.) The height of a two tiered modular unit is 18'-10" to top of parapet and 27'-3" in one segment to top of the concrete perimeter wall. Access is restricted from the inner fence.

Under Scheme A 30 inmates can be housed in modular cells.

Under Scheme B 32 inmates can be housed in modular cells.

Under Scheme C 28 inmates can be housed in modular cells.

Under Scheme D 48 inmates can be housed in modular cells.

Illustrative Floor Plans are  
attached.

#### Conclusions

We hope that we have responded to the question that Mr. Sigmund L. Fine has raised. Both of us want to see American Correctional Association's goals and standards implemented in jails throughout the country. We fail to understand how Mr. Fine, an expert in ACA standards could approve of a plan in which the most important standard, cell size per inmate, is violated.

[85013.03/A1021990]

[DIAGRAMS: See Joint Appendix at  
pp.266-269]

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

[Caption Omitted in Printing]

SECOND SUPPLEMENTAL AFFIDAVIT OF THE  
SHERIFF OF SUFFOLK COUNTY IN SUPPORT  
OF HIS MOTION TO MODIFY CONSENT DECREE

Now comes Robert C. Rufo on oath and  
states:

1. I am Robert C. Rufo, the  
Sheriff of Suffolk County, and I submit  
this affidavit in further support of my  
motion to modify the consent decree  
entered in this case.

2. Attached hereto and  
incorporated herein as Exhibit A is a  
true and complete copy of the decision of  
the State Building Code Appeals Board of  
March 1, 1990, pertaining to the new  
Suffolk County Jail at Nashua Street. As  
is set forth in the decision, the State  
Building Code Appeals Board has  
determined the Suffolk County Jail at

Nashua Street can support an inmate capacity of 653.

3. Attached hereto and incorporated herein as Exhibit B is a true and complete copy of the Certificate of Occupancy issued for the new Suffolk County Jail at Nashua Street on March 1, 1990, which sets forth the inmate capacity of the facility as 653 inmates.

4. Attached hereto and incorporated herein as Exhibit C are true and complete copies of the waivers which have been issued to the Suffolk County Sheriff's Department for the double-bunked operation of the new Suffolk County Jail at Nashua Street with the existing shower facilities.

5. I have read the foregoing affidavit and the statements contained

therein are true and are based upon  
personal knowledge.

          /s/            
Robert C. Rufo

[Jurat Clause Omitted in Printing]

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

[Caption Omitted in Printing]

STIPULATION

Plaintiffs and defendant Sheriff of  
Suffolk County stipulate as follows.

1. The average number of pre-trial  
male commitments to the Sheriff of  
Suffolk County for the years 1985-1990 is  
set forth in the table attached hereto as  
Exhibit A.

2. The male housing capacity of  
the Suffolk County Jail at Charles Street  
and under various proposals for the

Nashua Street Jail is set forth in  
Exhibit B attached hereto.

For the Plaintiffs: For the Defendant  
Sheriff:

<u>/s/</u>	<u>/s/</u>
Lynn Weissberg	Chester A. Janiak
Stern & Shapiro	Burns & Levinson
80 Boylston Street	50 Milk Street
Boston, MA 02116	Boston, MA 02109
Dated: March 16, 1990	

Average Number of Pre-Trial Male  
Commitments to Suffolk County Sheriff  
1985-1990

	1985	1986	1987	1988	1989	1990
January	319	349	350	385	464	372
February	308	332	350	380	482	370
March	321	333	369	401	404	
April	343	315	367	393	363	
May	315	296	369	387	354	
June	284	280*	361	377	392	
July	300	301	369	416	401	
August	326	313	371	458	410	
September	352	340	395	448	414	
October	352	333	376	442	429	
November	342	331	379	439	402	
December	344	331	385	430	384	
Yearly Average	326	321	370	413	408	

\*3 days unavailable

Male Housing Capacity -  
Suffolk County Jail

Charles Street Jail

(Single cell occupancy  
including 5 cells designated  
for medical/protective custody)  
Total: 342

Nashua Street Jail

1. Design capacity (single cell occupancy)	
regular male housing <sup>1</sup>	316
pre-classification holding	35
administrative/disciplinary segregation ("seg.")	32
protective custody ("p.c.")	8
medical ("med.")	<u>22</u>
Total:	413

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<sup>1</sup> The jail was originally designed to have 282 regular male housing units. See Rufo Aff. at para. 9. However, the Sheriff has now increased the number of regular male housing cells to 316 by converting 34 of the administrative and disciplinary segregations cells into regular male housing. See Supp. Rufo Aff. at para. 4-6.



- |    |  |            |
|----|--|------------|
| 2. | Inmates' Proposal (single cell occupancy)          |            |
|    | 100% use of seg., p.c., and med. cells             |            |
|    | 413 with modulars <sup>2</sup>                     | <u>48</u>  |
|    | Total:   | 461        |
| 3. | Inmates Proposal (single cell occupancy)           |            |
|    | 75% use of seg., p.c., and med. cells <sup>3</sup> | 389        |
|    | with modulars                                      | <u>48</u>  |
|    | Total:   | 437        |
| 4. | Sheriff's Proposal                                 |            |
|    | single cell occupancy at 100% use                  | 413        |
|    | double bunking in 197 cells                        | <u>197</u> |
|    | Total:   | 610        |

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<sup>2</sup> See Rothman Rept. 2 at 14 (P. App. II-A).

<sup>3</sup> This assumes 100% use of 316 regular male housing cells and 75% use of the segregation, protective custody and medical cells.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

[Caption Omitted in Printing]

MOTION OF THE SHERIFF OF  
SUFFOLK COUNTY FOR  
MODIFICATION OF CONSENT DECREE

Now comes the Sheriff of Suffolk County and moves this Honorable Court pursuant to Federal Rule of Civil Procedure 60(b)(5) and (6) for a modification of the Consent Decree entered into between the parties in this case April 9, 1979, to the extent of permitting the Sheriff to house two pretrial detainees per cell in two hundred (200) of the two hundred eighty-two (282) regular male housing cells in the new Suffolk County Jail now under construction on Nashua Street and scheduled for occupancy in March, 1990.

As grounds for this motion the Sheriff states that since the Consent Decree was entered into:

1. There has been a substantial and material change in the applicable law - Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861 (1979) - and operative facts - continuing increases in the Suffolk County pretrial detainee population.

2. The proposed modification would meet constitutional standards with respect to the conditions of confinement of pretrial detainees and is compatible with achieving the overall purpose of the Consent Decree of confining Suffolk County pretrial detainees in conditions which meet constitutional standards.

For further grounds in support of this motion the Sheriff of Suffolk County

relies upon his memorandum of law filed  
herewith.

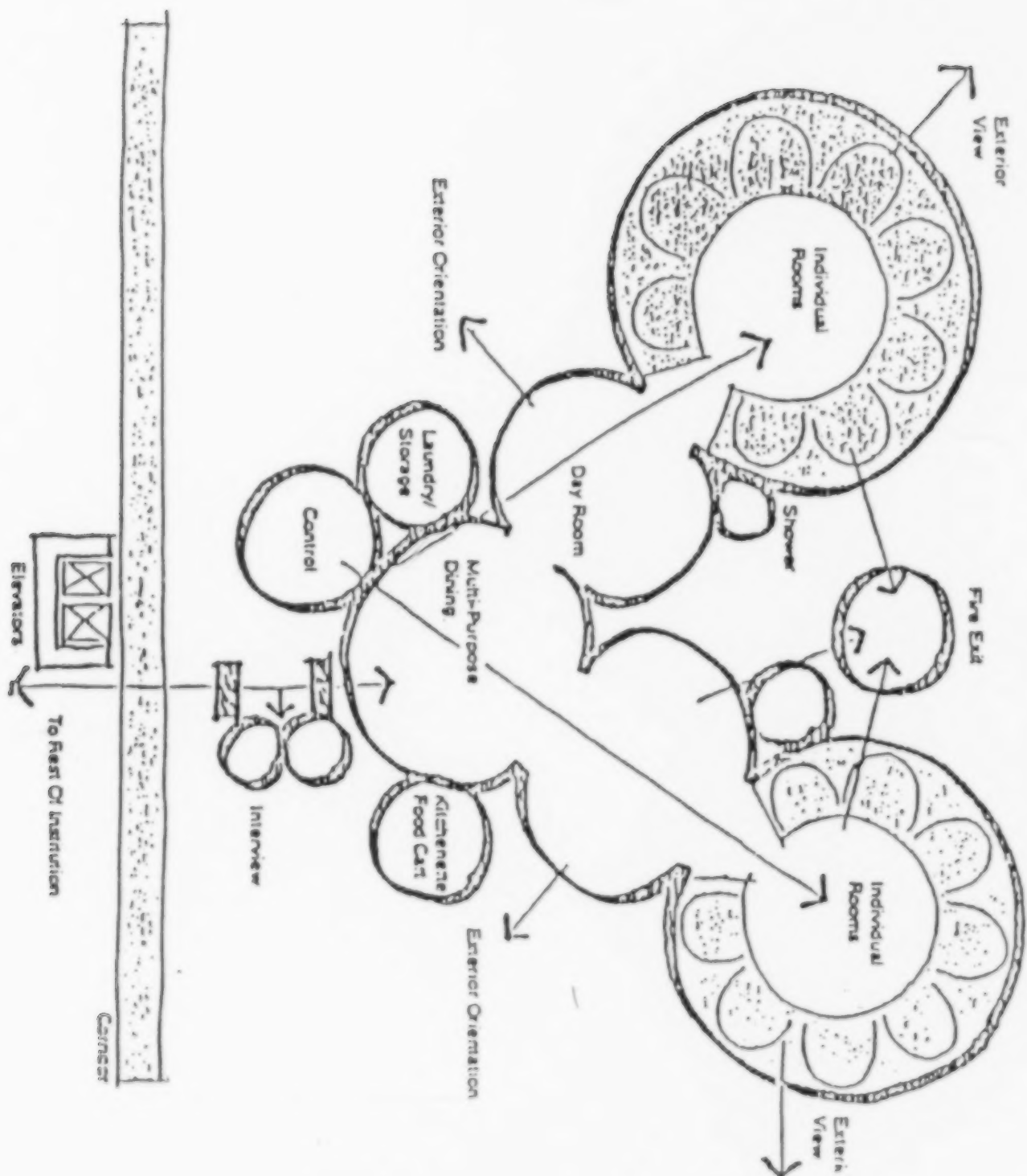
Respectfully submitted/  
SHERIFF OF SUFFOLK COUNTY  
By his attorney,

/S/

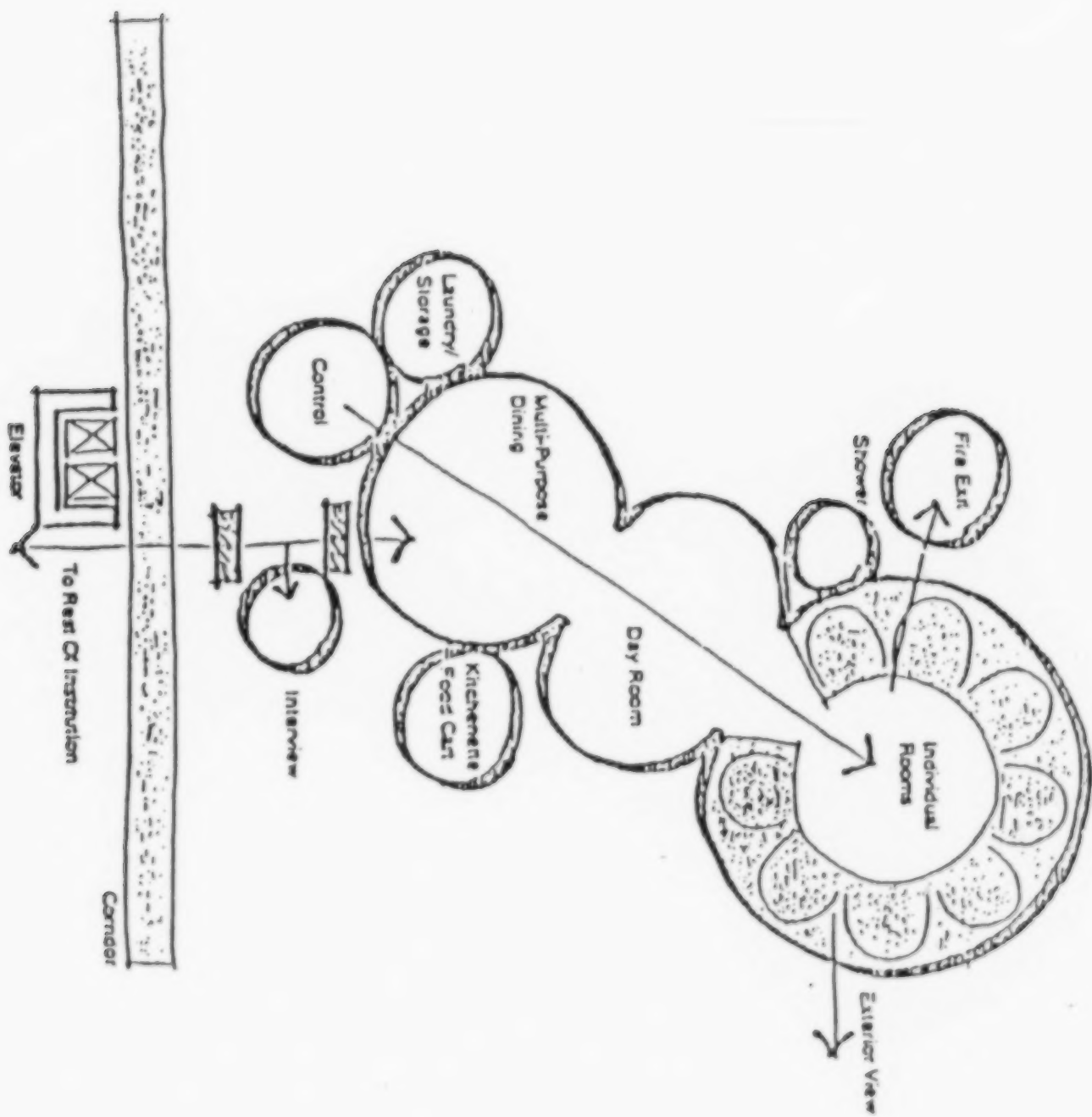
Chester A. Janiak  
BBO #250340  
BURNS & LEVINSON  
50 Milk Street  
Boston, MA 02109  
(617) 451-3300



Typical Housing Unit - Male



Typical Housing Unit—Female

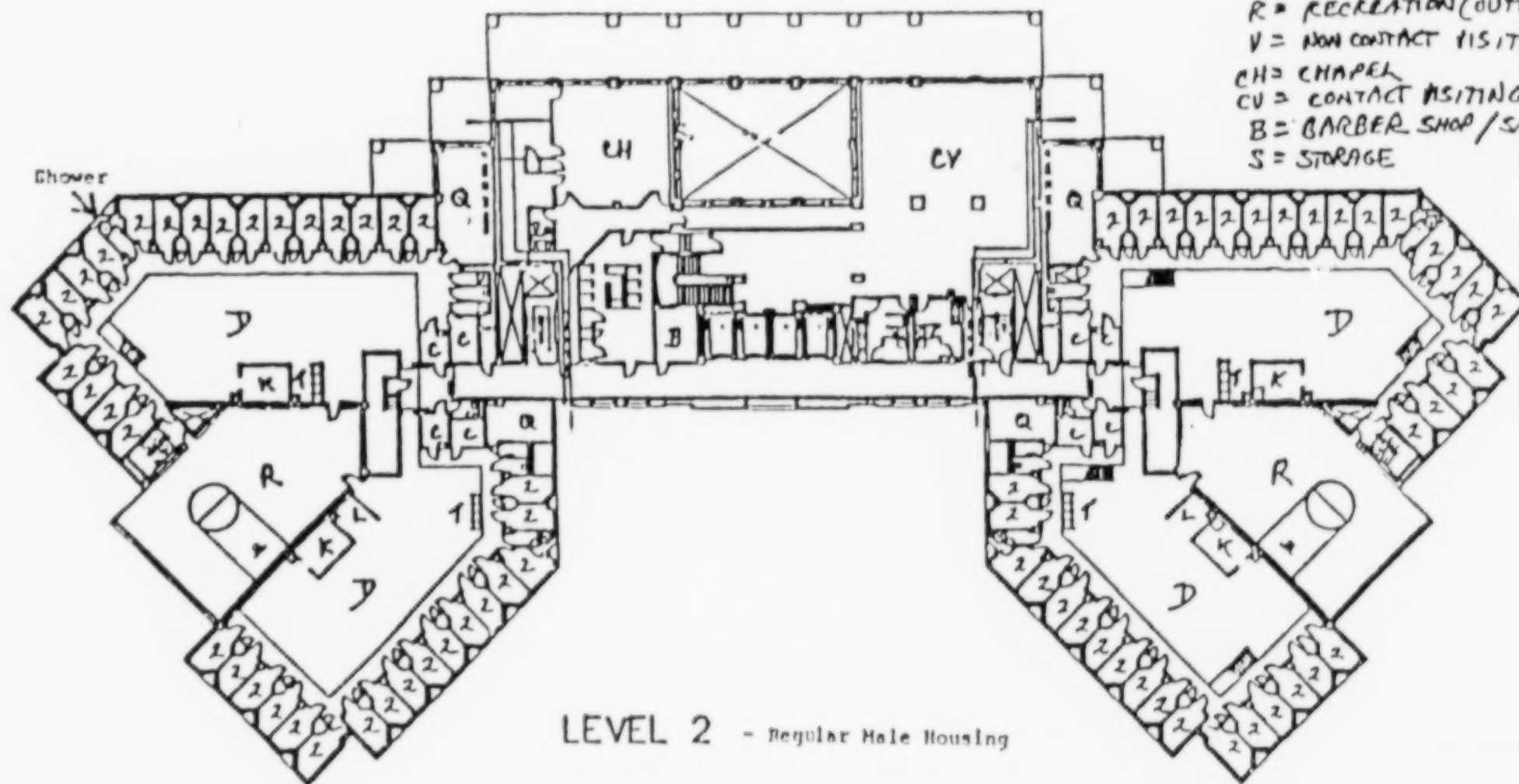


All cells are marked  
"1" or "2" indicated  
single or double  
occupancy

DOUBLE BUNKING CONFIGURATION

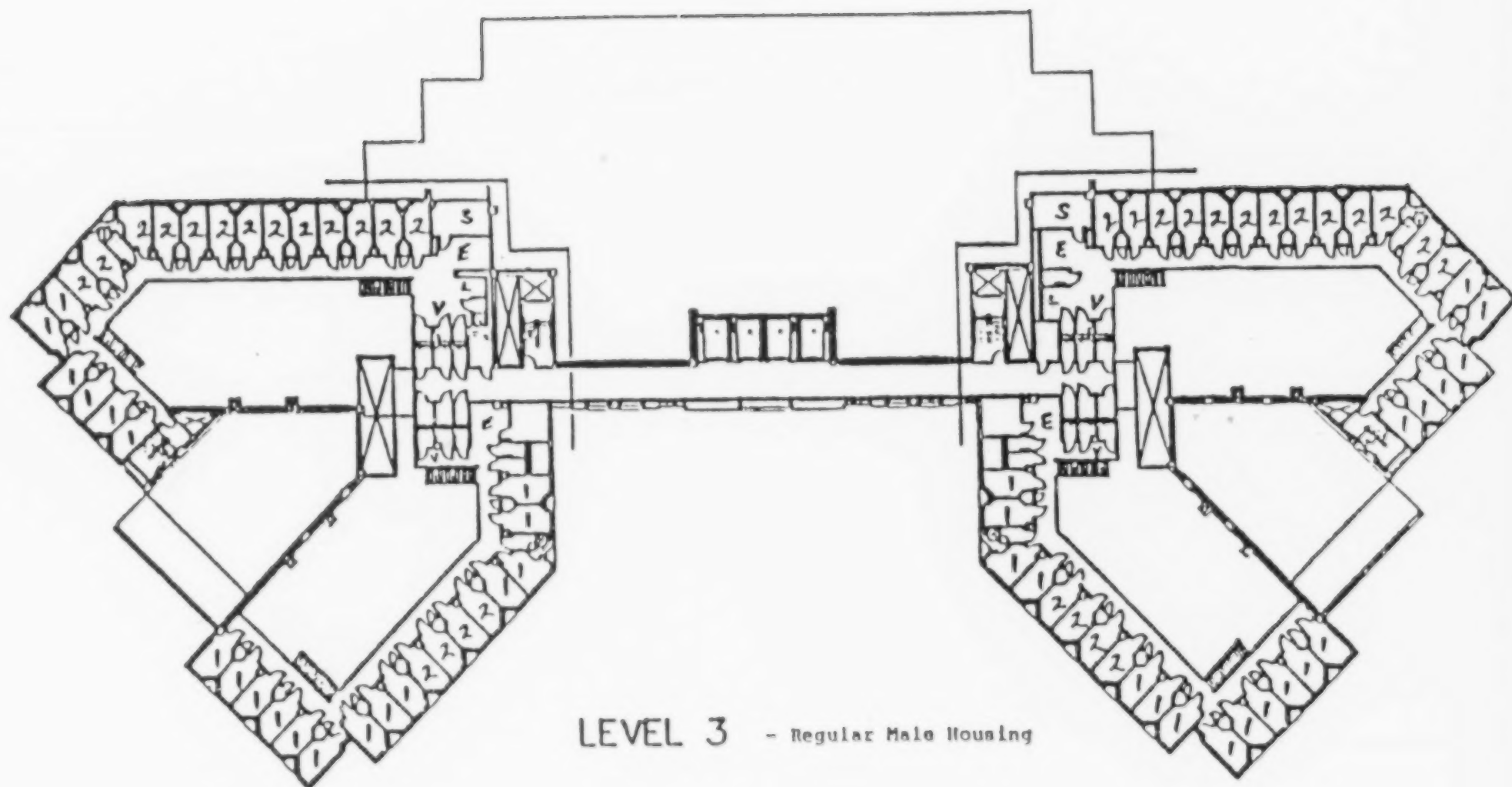
Scale: 1"=30'

D = DAYROOM  
K = KITCHENETTE  
Q = QUIET ROOM  
T = TELEPHONES  
C = COUNSELING/ATTY.  
L = LAUNDRY  
R = RECREATION (OUTDOOR)  
V = NON CONTACT VISITING  
CH = CHAPEL  
CV = CONTACT VISITING  
B = BARBER SHOP/SALE  
S = STORAGE



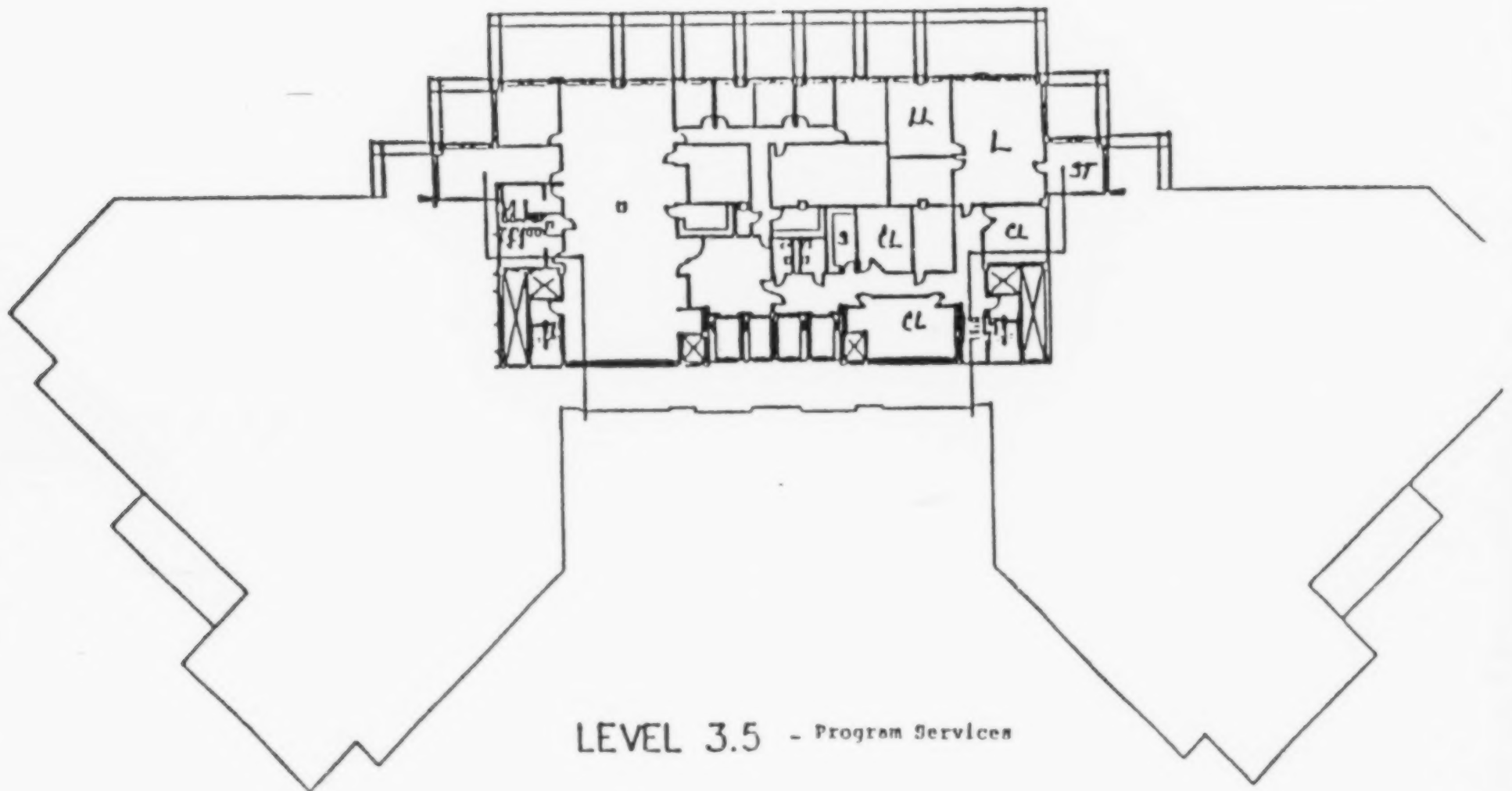
LEVEL 2 - Regular Male Housing

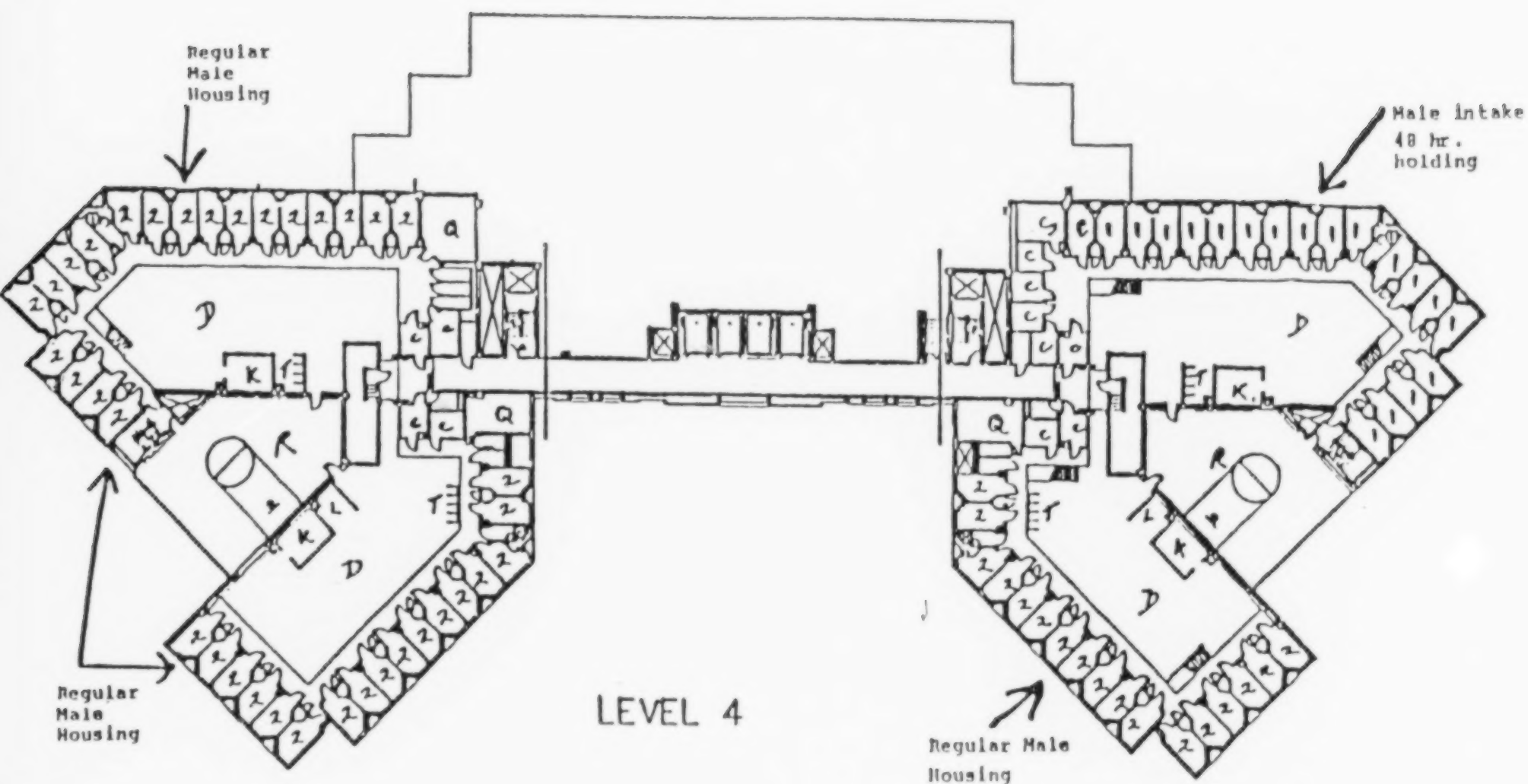


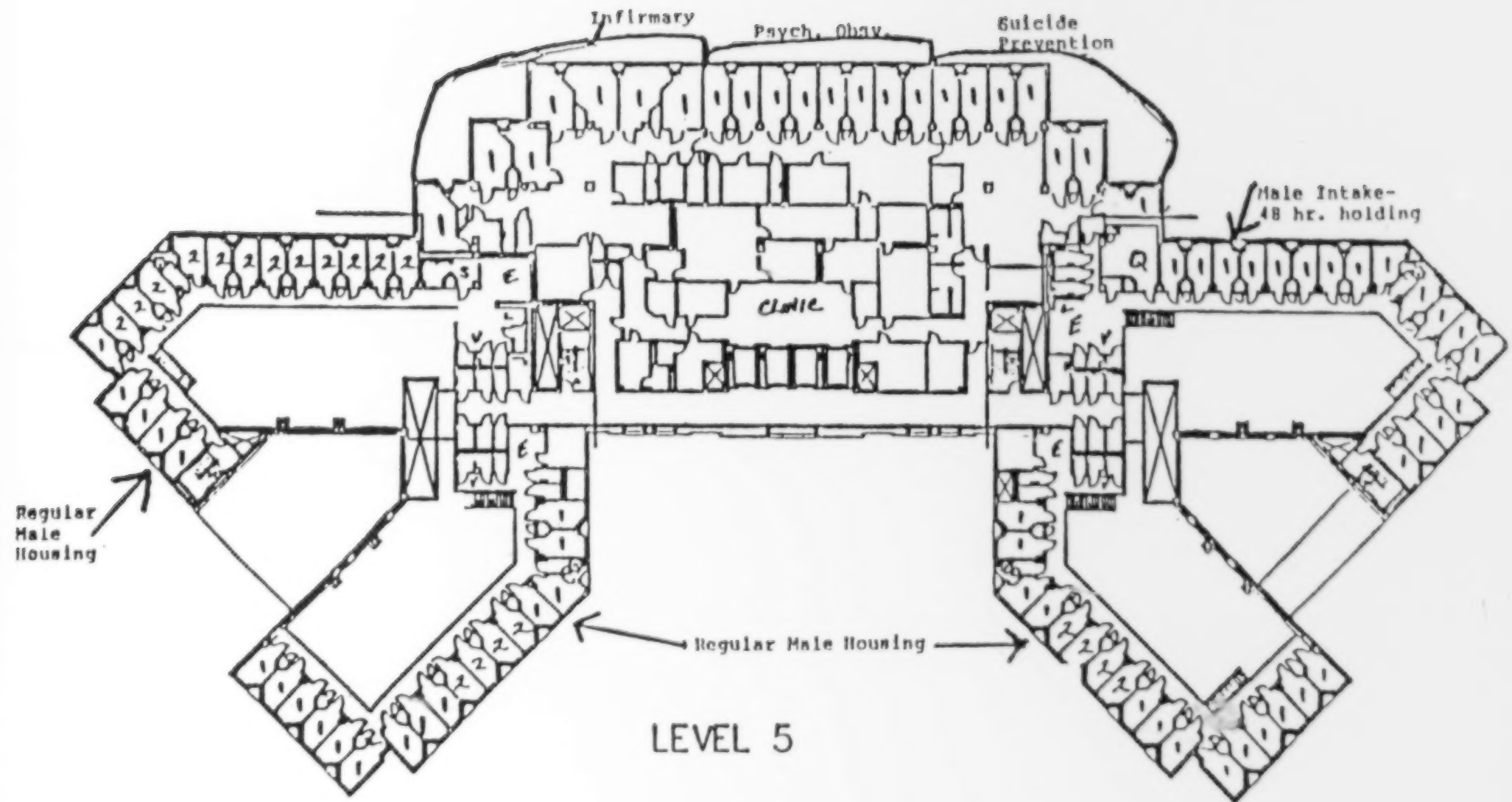


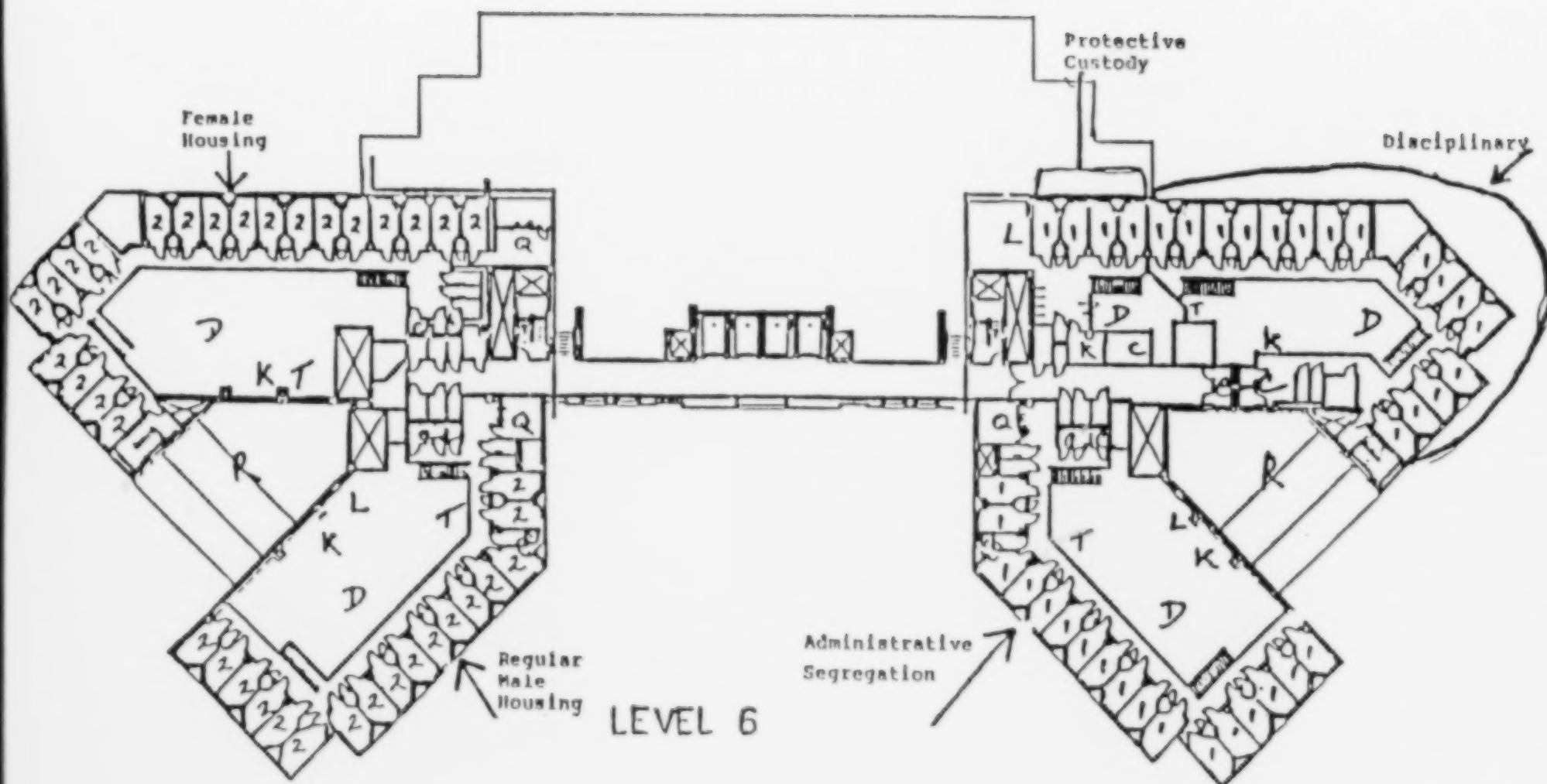
LEVEL 3 - Regular Male Housing

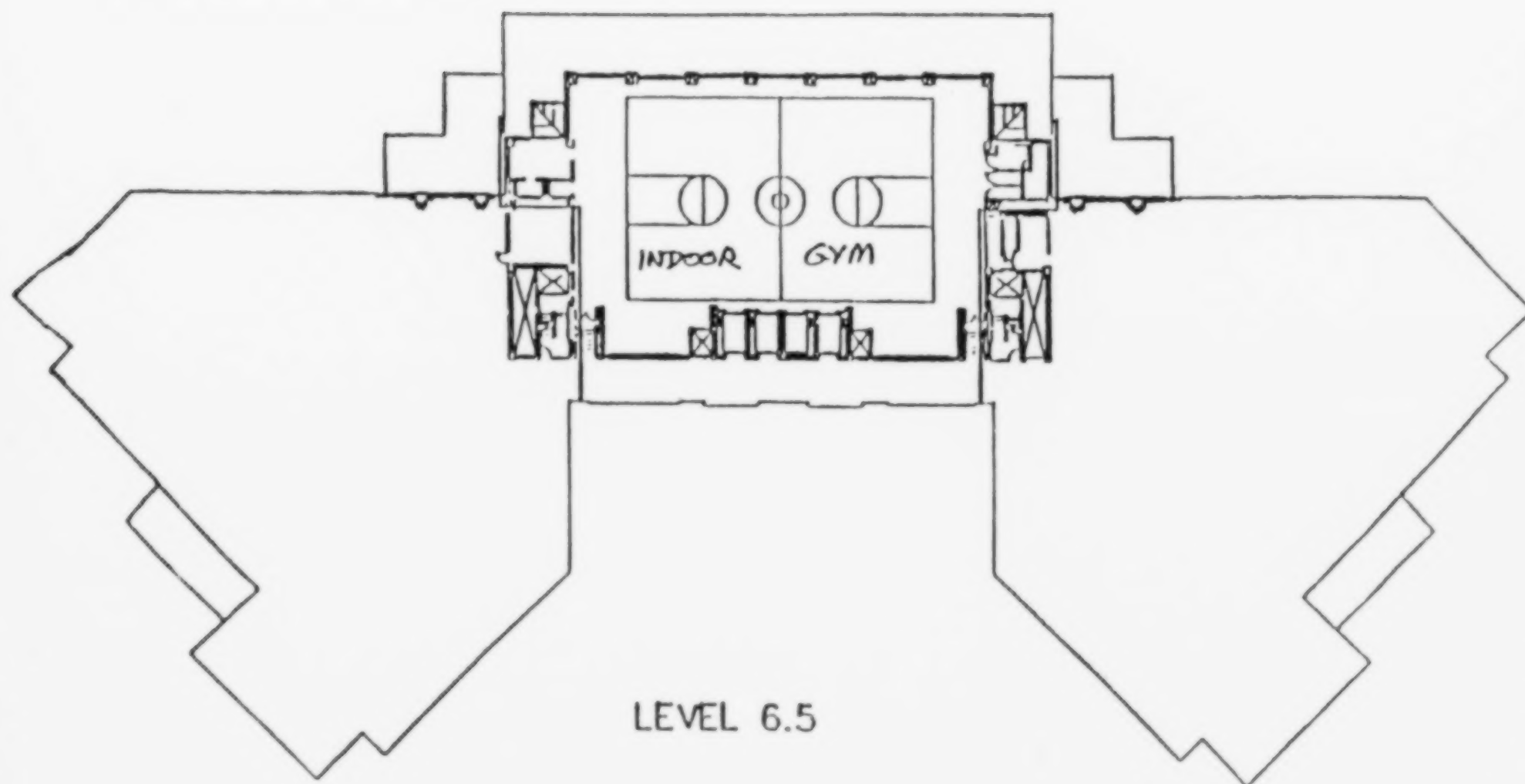
L = GENERAL LIBRARY  
LL = LAW LIBRARY  
CL = CLASSROOM  
ST = STUDY











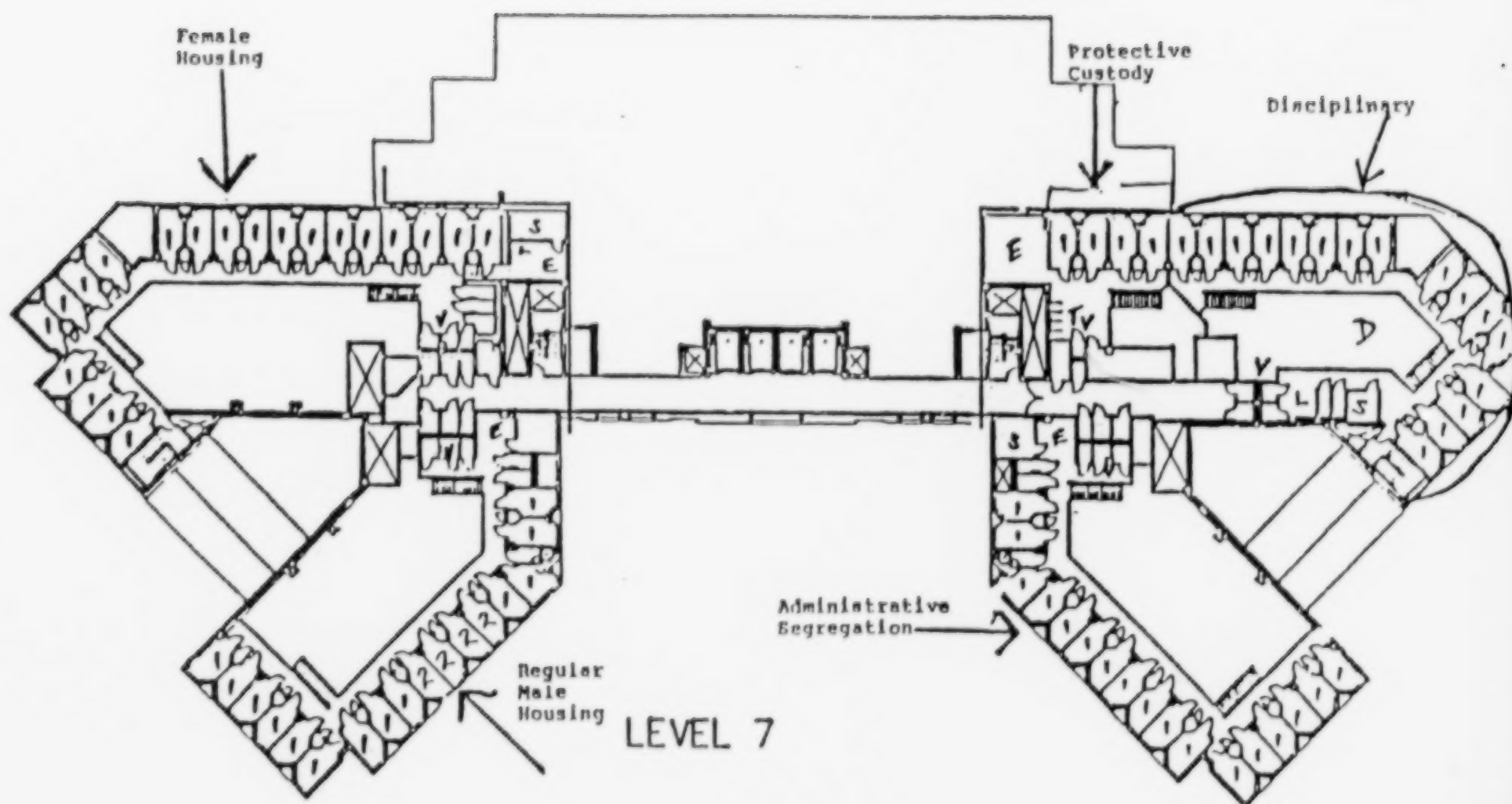




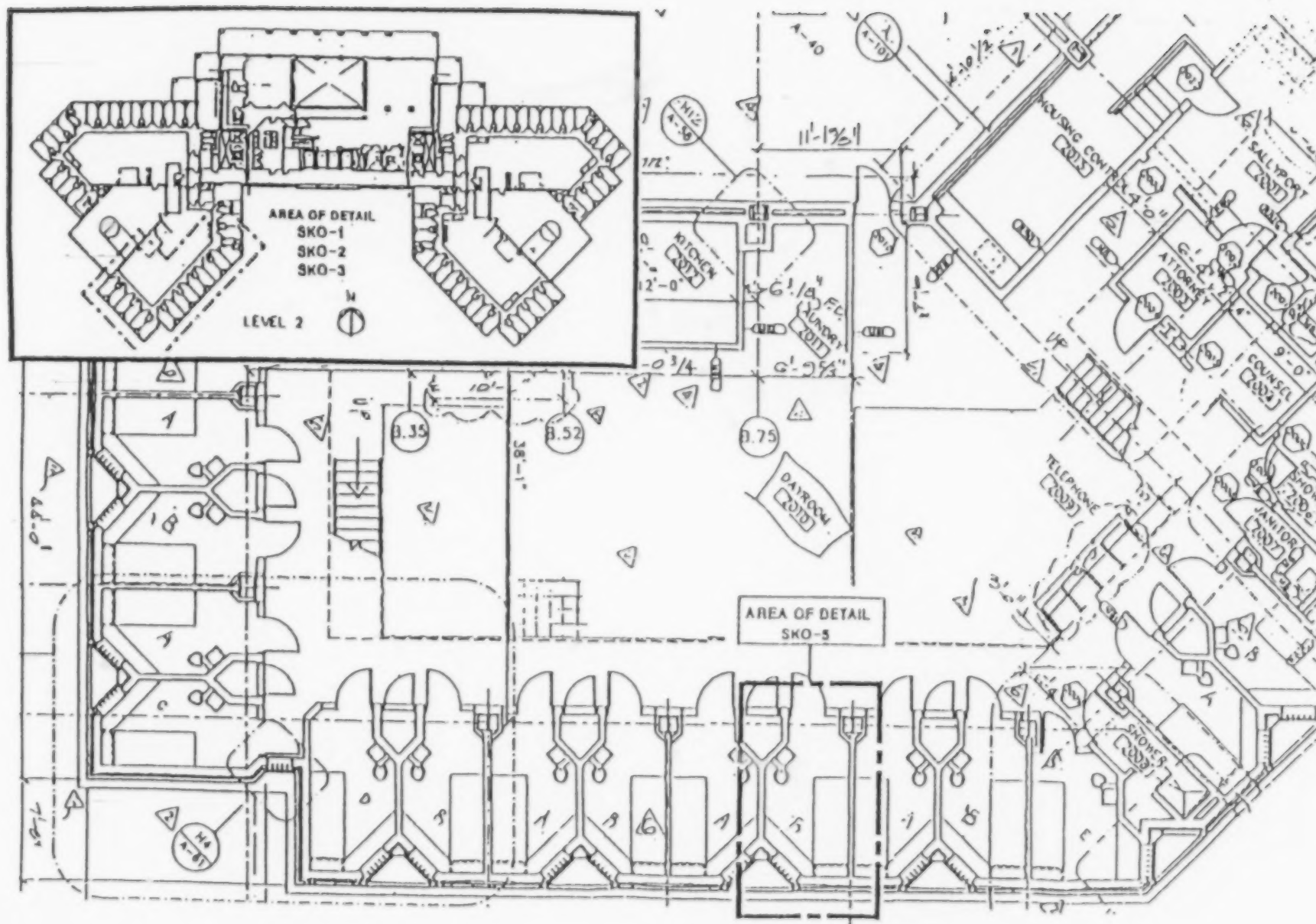
Table I.  
Department of Correction Inmate Count and Facility Capacity  
by Month for Years 1979-1989

Month	1979		1980		1981		1982		1983		1984		1985		1986		1987		1988		1989	
	Pop	Cap	Pop	Cap	Pop	Cap	Pop	Cap	Pop	Cap	Pop	Cap	Pop	Cap	Pop	Cap	Pop	Cap	Pop	Cap	Pop	Cap
Jan	2792	2857	2867	2819	3250	2641	3769	2921	4460	3101	4626	3112	5038	3135	5376	3257	5721	3295	6228	3897	6731	3785
Feb	2839	2857	2927	2819	3275	2641	3852	2921	4538	3101	4683	3112	5129	3135	5399	3257	5773	3295	6385	3897	6859	3824
March	2845	2846	2809	2902	3323	2641	3940	3002	4606	3101	4773	3112	5169	3135	5477	3257	5860	3295	6528	3897	6951	3874
April	2862	2846	3020	2811	3322	2641	4030	3002	4649	3101	4817	3112	5118	3257	5529	3257	5945	3295	6611	3972	7086	3874
May	2849	2846	3060	2810	3369	2641	4092	3002	4605	3121	4892	3115	5257	3257	5605	3295	6039	3633	6628	3869	7119	3868
June	2836	2846	3084	2818	3400	2699	4149	3002	4615	3121	4890	3135	5209	3257	5615	3295	5995	3633	6611	3972	7185	3918
July	2809	2846	3053	2819	3436	2698	4216	3002	4629	3121	4968	3135	5274	3257	5629	3295	6119	3633	6652	3785	7258 <sup>*</sup>	3918
Aug	2778	2846	3064	2988	3476	2848	4251	3002	4615	3121	4964	3135	5268	3257	5631	3295	6040	3591	6651	3785		
Sept	2724	2846	3105	2990	3531	2862	4277	3002	4573	3121	4961	3135	5255	3257	5616	3295	6101	3591	6621	3787		
Oct	2825	2846	3143	2996	3614	2921	4359	3081	4647	3100	5000	3135	5313	3257	5661	3295	6136	3591	6658	3787		
Nov	2860	2865	3196	3845	3685	2921	4392	3081	4661	3100	5031	3135	5416	3257	5735	3295	6223	3684	6692	3785		
Dec	2876	2839	3213	2845	3756	2921	4454	3081	4654	3112	5042	3135	5371	3257	5738	3295	6266	3684	6708	3785		

\* for 1989, June 30th count was used

Notes: Bridgewater S.H., S.D.P., and T.C. not included in count  
Longwood OUI not included in count

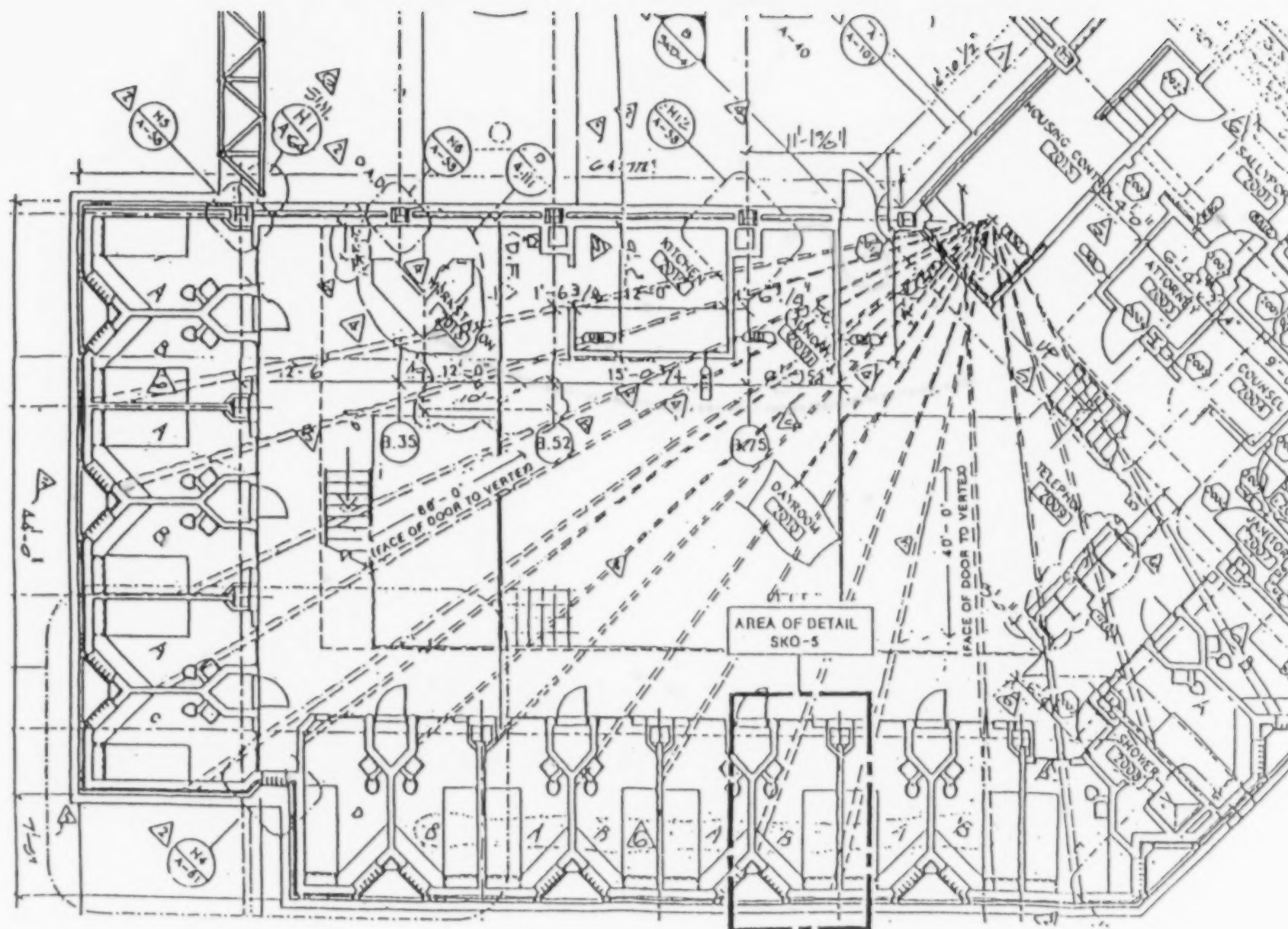




Rollman  
 Rollman  
 Heineman

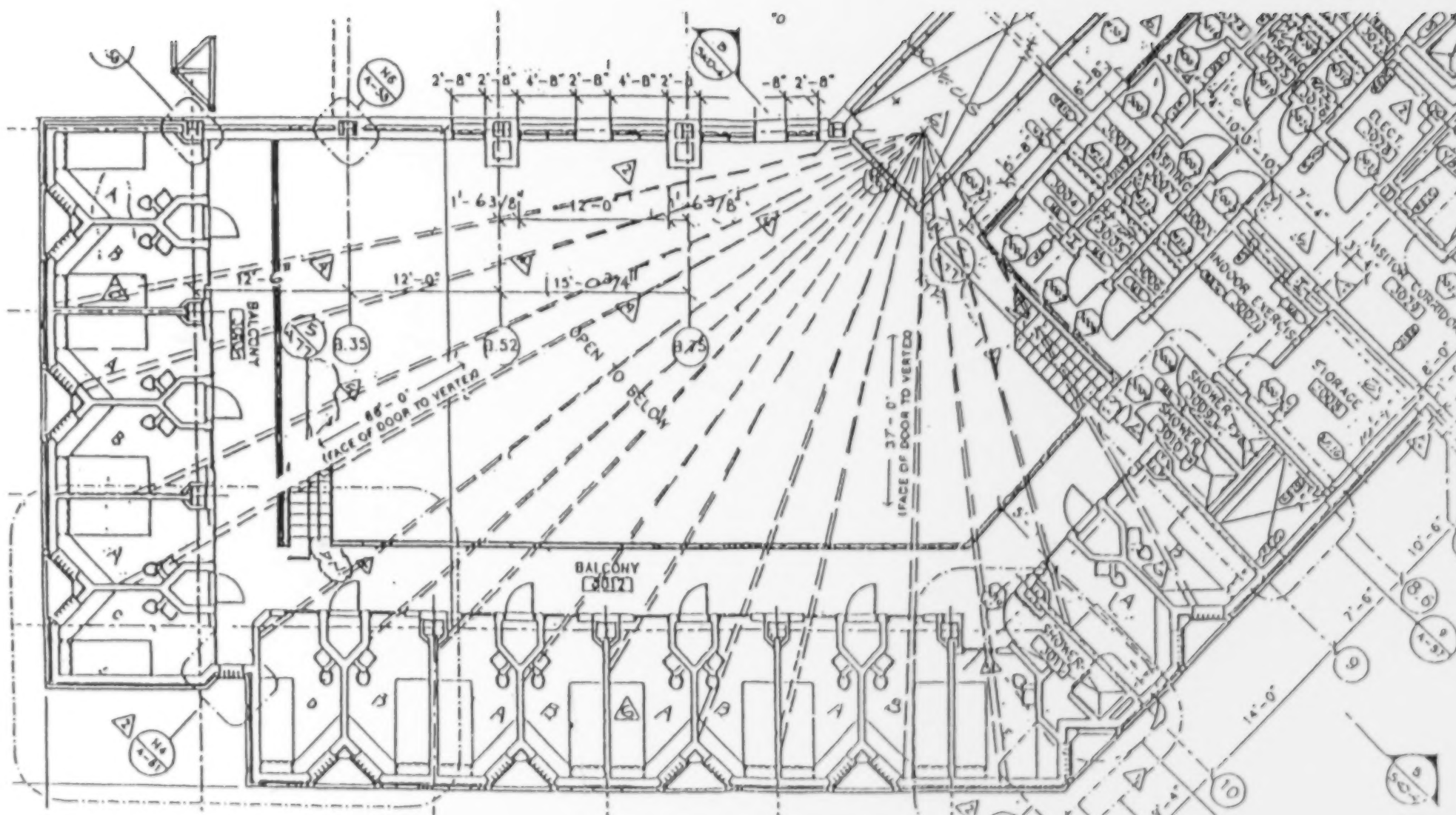
Date 8 SEPT '59 Project SUFFOLK COUNTY JAIL  
 Scale 1/8" = 1'-0" Project No. 37312.23  
 by R.R. Job PARTIAL NW MODULE AT DAYROOM 2010, LOCATION OF RESIDENT'S ROOM DETAIL

SKO-1



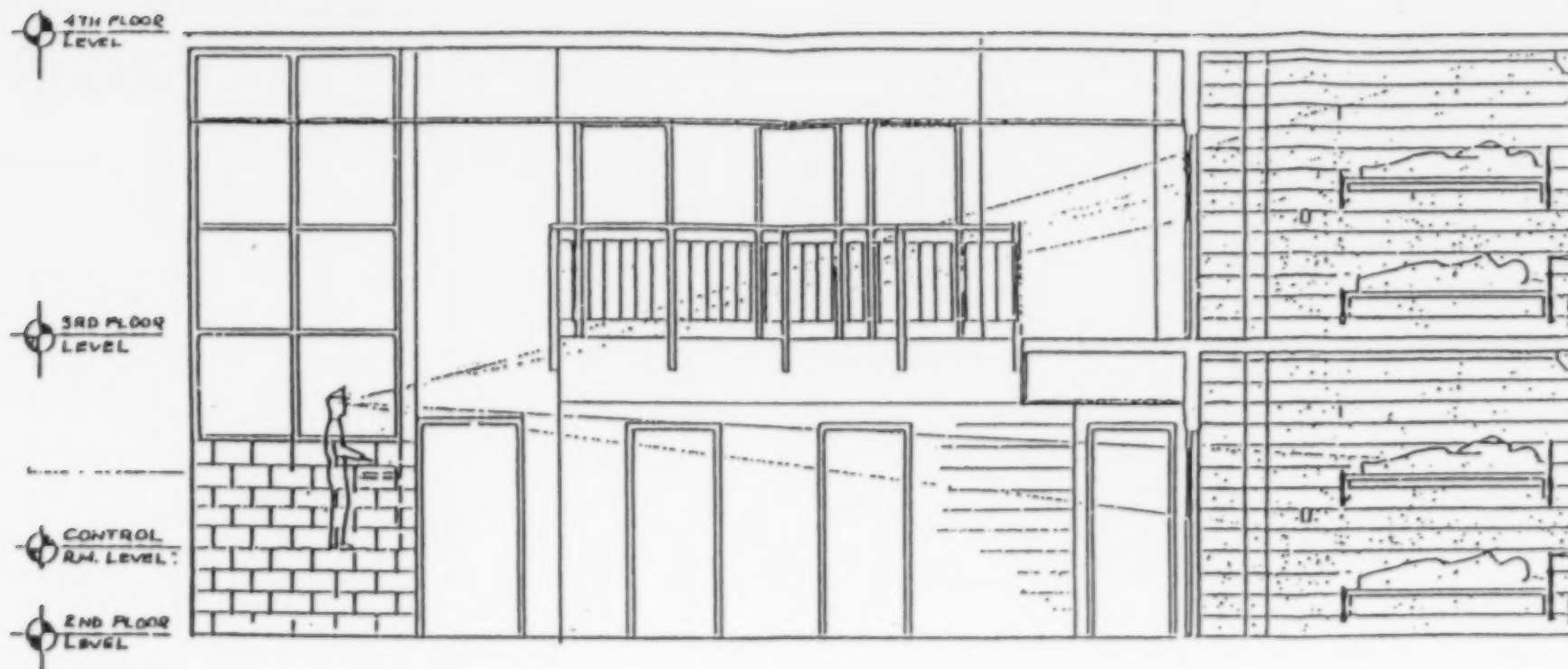
<u>Rothman</u>	Date: 6 SEPT '09	Project: MURRAY COUNTY JAIL
<input checked="" type="checkbox"/> Rothman	Scale: 1/8" = 1'-0"	Project No.: 07777 03
<u>Hekman</u>	By: RCR	Title: RESIDENT VISIBILITY FROM HOUSING CONTROL (LEVEL 2)

SKO-2



Rothman	Date: 6 SEPT '89	Project: SUFFOLK COUNTY JAIL
Rothman	Scale: 1/8" = 1'-0"	Project No: 83013.03
Holmesman	By: RG	Title: RESIDENT VISIBILITY FROM HOUSING CONTROL (LEVEL 3)

SIKO-3

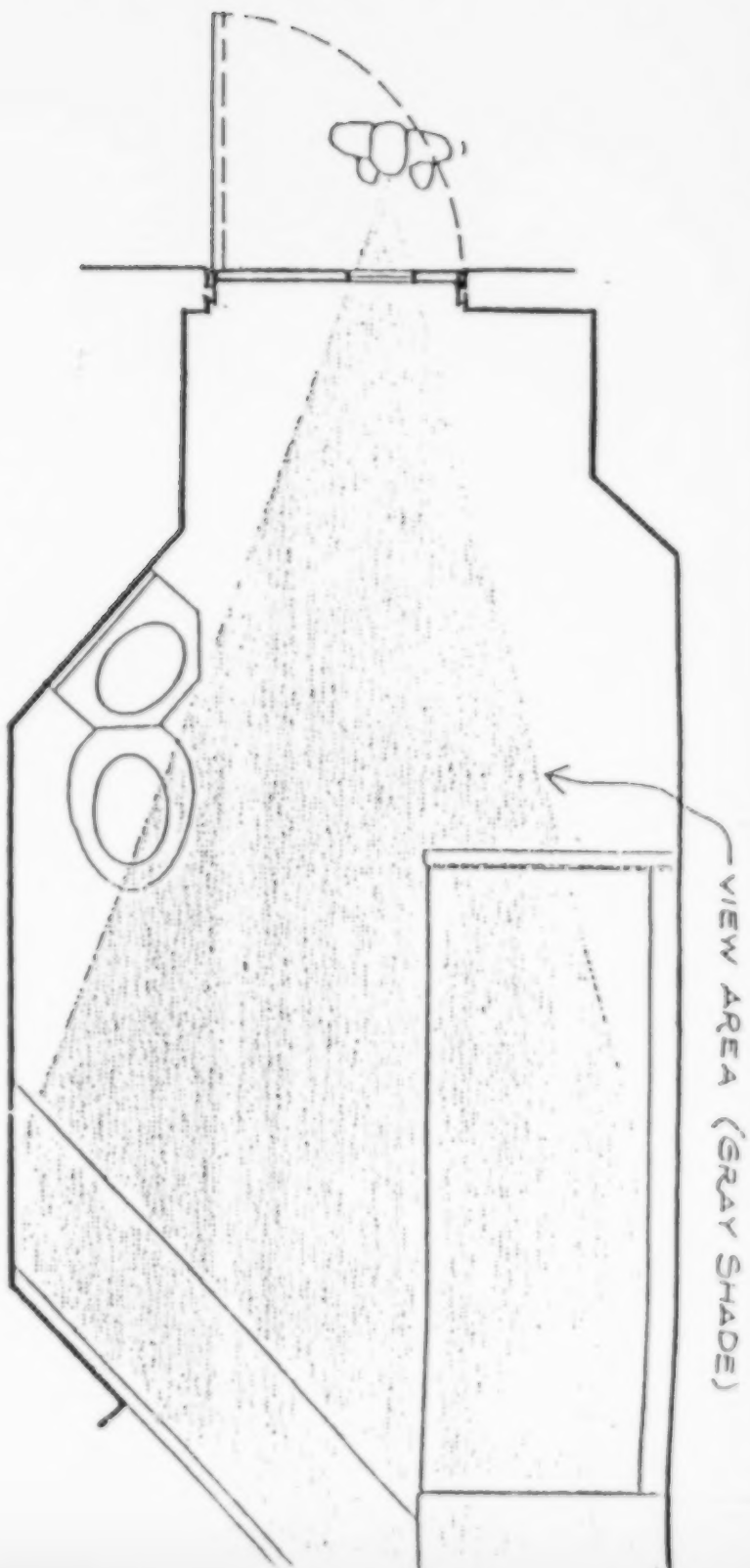


SECTION 'B'

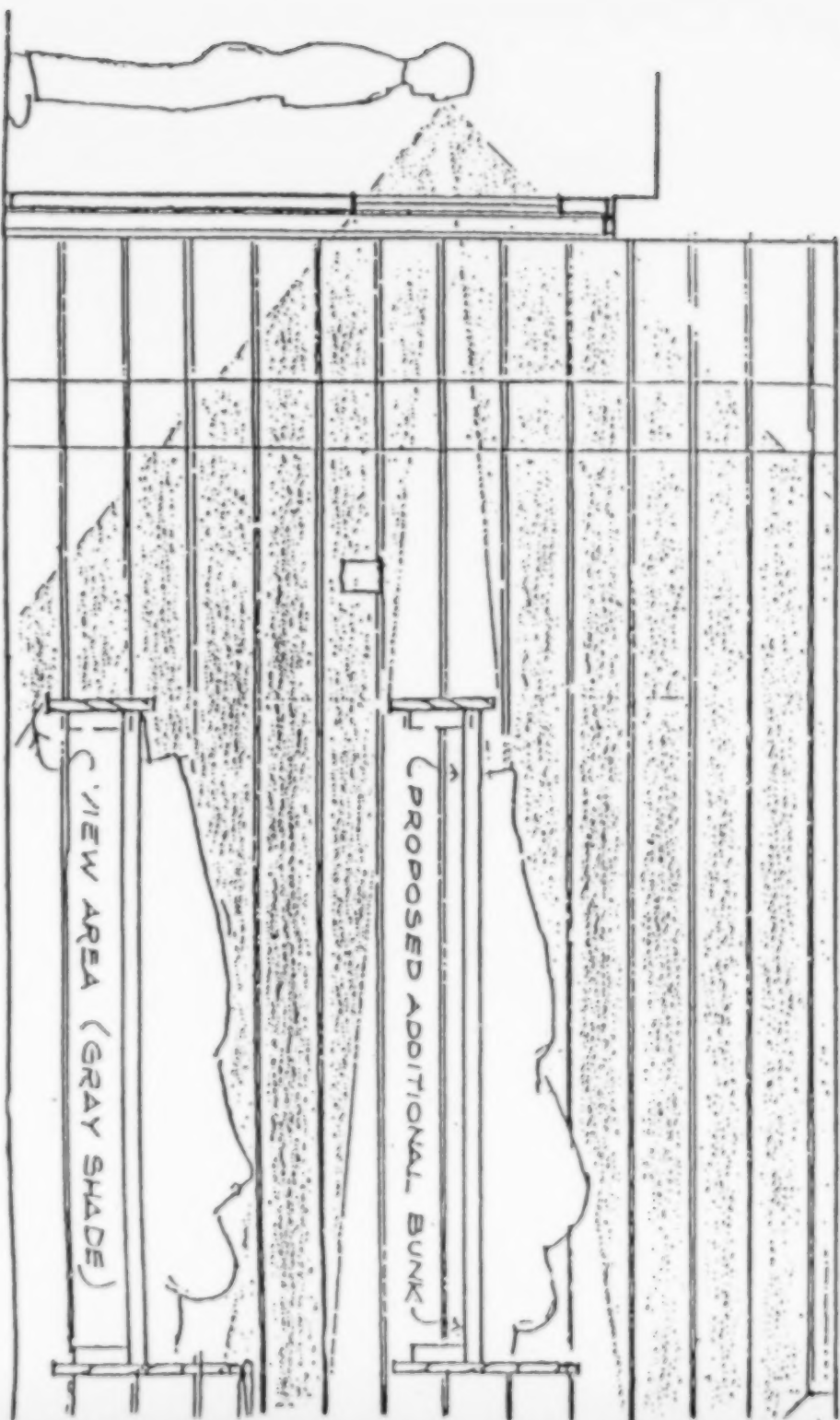
Rothman	Date: 6 SEPT '09	Project: SUFFOLK COUNTY JAIL
Rothman	Scale: 1/4" = 1'-0"	Project No: 63013.03
Hickman	by: RQ	for: RESIDENT VISIBILITY FROM HOUSING CONTROL (SECTION THROUGH CELLS / SECTION 'B')

SKO-4





CELL PLAN (TYPE 'B')



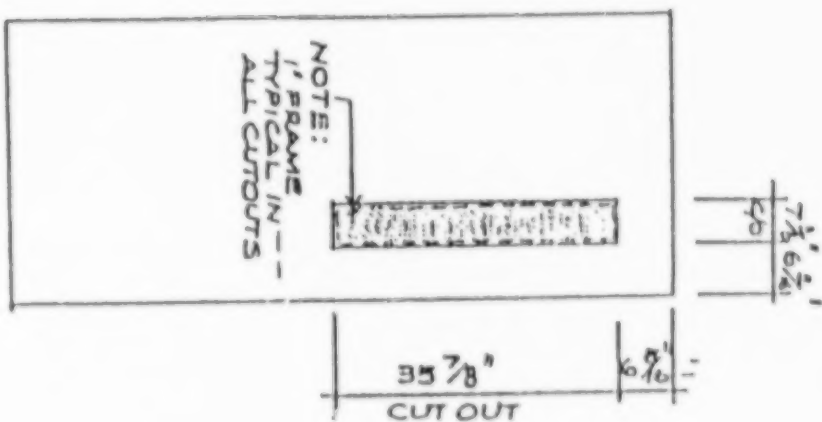
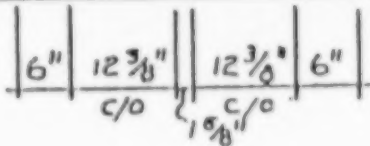
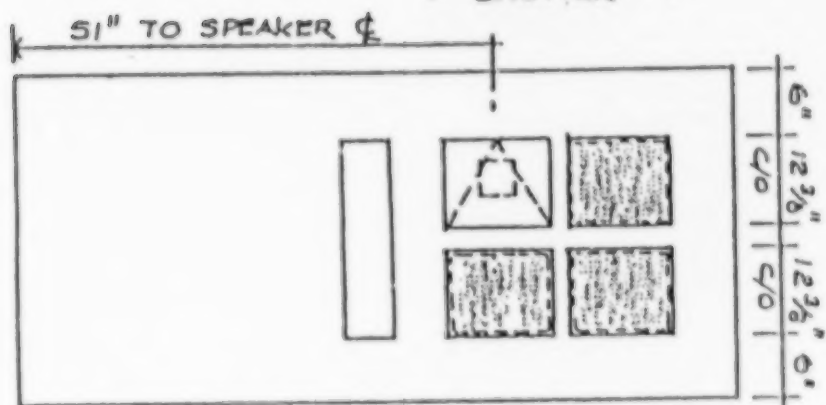
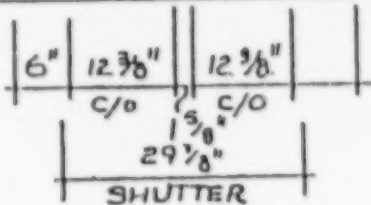
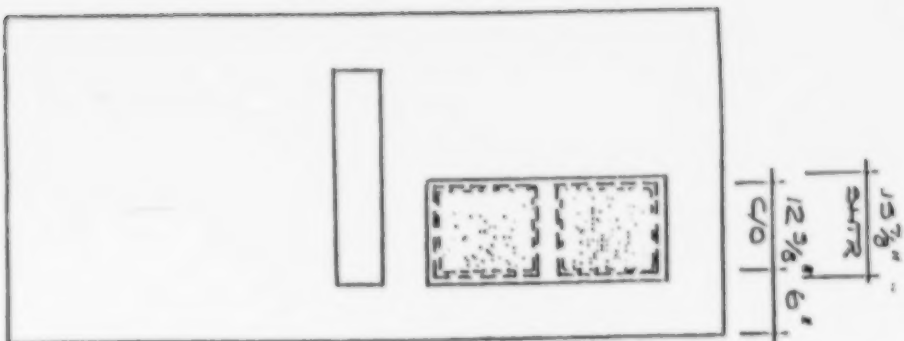
SECTION "A"

Rothman  
Heineman

Date: 6/5/87  
Scale: 1/2" = 1'-0"  
By: RJA

Project: SUFFOLK COUNTY JAIL  
Project No: B2013.03  
Title: RESIDENT VISIBILITY  
TYPICAL TYPE 'B'  
RESIDENTS' ROOM

SKO-f



MEDICAL

PSYCHIATRIC

TYPICAL

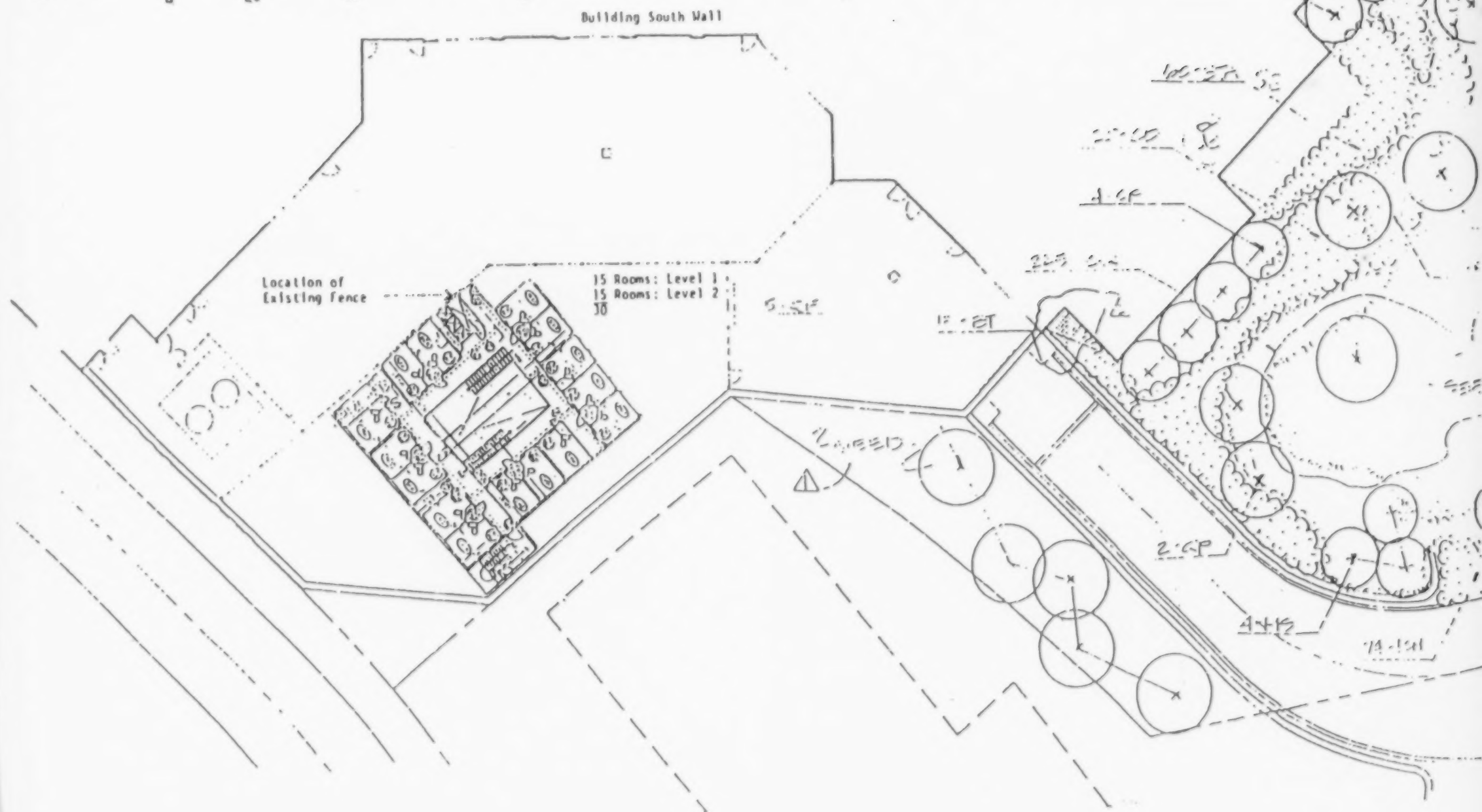
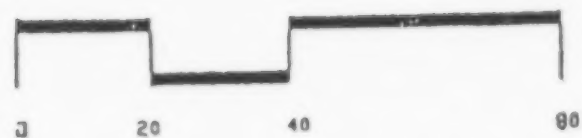
: DENOTES GLASS AREA

Rothman  
Rothman  
Heinemann

Date: 6 SEPT '09 Project: SUFFOLK COUNTY JAIL  
Scale: 1/2" = 1'-0" Project No.: 35013.03  
By: RQ Title: TYPICAL RESIDENTS' RM.  
DOOR TYPES

SKO-6

SUFFOLK COUNTY JAIL A



# SUFFOLK COUNTY JAIL B

